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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1956

# No. 426

JESSE BLACKBURN, PETITIONER,

*vs.*

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALABAMA

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[fol. i] [Caption omitted]

## IN CIRCUIT COURT OF COLBERT COUNTY

INDICTMENT—July 10, 1948

* * * * * * *

The Grand Jury of said County charges that before the finding of this Indictment Jesse Blackburn, whose name is to the Grand Jury otherwise unknown, than as stated, feloniously took $76.00 consisting of lawful currency of the United States of America and lawful coined money of the United States of America, the denominations of which are otherwise unknown to the Grand Jury, and one billfold of the value of $3.50, the property of W. N. Greenhill, and four Ten-Dollar bill-, two Five-Dollar bills, and one One-Dollar bill, lawful currency of the United States of America, and one billfold of the value of $3.00, the personal property of Thomas Clyde Wright, from the person of Thomas Clyde Wright, and against his will, by violence to his person, or by putting him in such fear as unwillingly to part with the same, against the peace and dignity of the State of Alabama.

W. L. Almon, Solicitor of the Eleventh Judicial Circuit.

Grand Jury No. 25.

A true bill:

Warren Parker, Foreman Grand Jury.

Filed in open Court on the 10 day of July, 1948 in the presence of the Grand Jury.

Mrs. W. Lee Stanley, Clerk.

Presented to the presiding Judge in open Court by the Foreman of the Grand Jury, in the presence of 17 other Grand Jurors, and filed by order of Court this 10 day of July, 1948.

Mrs. W. Lee Stanley, Clerk.

The amount of bail to be required of Defendant, $— No Bond.

Robert M. Hill, Judge.

[fol. ii] IN CIRCUIT COURT OF COLBERT COUNTY

DOCTOR'S CERTIFICATE

[Title omitted]

We would say the above named person is a colored man and appears to be about thirty years of age.

On two visits by Dr. W. Russell Trapp and Dr. Howard C. Johnson, legal and lawful Practitioners of the State of Alabama, Colbert County, Tuscumbia, Alabama, observation and examination revealed that this above named person was not mentally able or mentally alert enough to withstand trial as of this date. We recommend that he be turned over to the Alabama State Hospitals for further observation and classification of his exact mental status.

This, the 26th day of July, 1948.

Respectfully submitted, Dr. W. Russell Trapp, Dr. Howard C. Johnson.

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IN CIRCUIT COURT OF COLBERT COUNTY

[Title omitted]

COMMITMENT TO ALABAMA STATE HOSPITALS FOR OBSERVATION AND REPORT—July 26, 1948

It appears thiis defendant is now incarcerated in the Colbert County jail charged as above listed and has heretofore been in the mental ward of the U. S. Government Veterans' Facilities and has in his possession two commitments to mental institutions for observation and it having been made to appear to the Judge by the testimony of the Sheriff and Jailer that there is reasonable grounds to believe that said defendant may be insane, the undersigned Judge has instituted an investigation and called three respectable physicians and other credible witnesses and under the provisions of Section 428 of Title 15 of the 1940 Code [fol. iii] of Alabama; and from said ex parte examination, the Court is of the opinion that there is reasonable ground to believe that the defendant was insane either at the time of the commission of such offense or at the present time.

Now, Therefore, it is hereby ordered that such defendant be delivered by the Sheriff of Colbert County, Alabama, to the Superintendent of the Alabama State Hospitals, who is charged with the duty of placing such defendant under the observation and examination of himself and two members of his medical staff to be named by him constituting a commission on lunacy with the view of determining the mental condition of such defendant and the existence of any mental disease or defect which would affect his present criminal responsibility or his criminal responsibility at the time of the commission of the crime. Said defendant shall remain in the custody of the Superintendent of the Alabama State Hospitals and subject to the observation of and examination by such commission of lunacy for such length of time as may in the judgment of the commission of lunacy be necessary to determine his mental condition so far as it affects his criminal responsibility.

As soon as such commission of lunacy has reached a conclusion within the time and in the respects as hereinabove set forth, as to the mental condition of such defendant, it shall make a full written report thereof to the Clerk of the Circuit Court of Colbert County, Alabama, Tuscumbia, Alabama, said Court being the Court in which the indictment against said defendant is pending, which report shall be placed on file and be accessible to the Court, to the Solicitor, and to the Counsel appointed by the Court to represent the defendant, to-wit: Hon. Jack Carter Reed, Attorney, Tuscumbia, Alabama, and Hon. John C. Martin, Attorney, Sheffield, Alabama.

It is further ordered that said defendant remain in the safe custody and control of the Authorities of the Alabama State Hospitals, and if on the coming in of said report, it is shown to be that the defendant is sane, then the Superintendent of said Alabama State Hospitals must inform the Judge of this Court and the Sheriff of this Court, whereupon said defendant must be remanded to the County Jail of Colbert County, Alabama, and criminal proceedings be resumed against him.

It is further ordered that this order is authority to pay the Doctors appointed by the Court for their efforts expended in the examination, and the authority for the

Sheriff to be compensated for removing said defendant to [fol. iv] the State Hospital for the insane at Tuscaloosa, Alabama.

Copies of this order shall be placed in the offices and with the officials as listed below:

Done and ordered in open court, this the 26th day of July, 1948.

Robert M. Hill, Circuit Court Judge of Colbert County, Alabama.

Copies for:

Mr. Lee McCorkle, Sheriff, Colbert County, Alabama.

Mrs. W. Lee Stanley, Circuit Court Clerk, Tuscumbia, Alabama.

Dr. W. D. Partlow, Superintendent, Alabama State Hospitals, Tuscaloosa, Alabama, Circuit Court file.

W. L. Almon, Solicitor of the 11th Judicial Circuit.

One copy to the Attorneys for defendant.

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IN CIRCUIT COURT OF COLBERT COUNTY

REPORT OF DOCTORS—January 6, 1949

* * * * * * *

To: Honorable Robert *H.* Hill, Judge of Circuit Court, Colbert County, Tuscumbia, Alabama:

Under the provisions of an Act of the Legislature of Alabama approved April 17, 1933, (Title 15, Section 425, Code of Alabama of 1940) one Jesse Blackburn, colored, indicted for robbery and assault with intent to murder, was admitted to the Searcy Hospital on July 29, 1948 under order of Honorable Robert *H.* Hill, Judge of Circuit Court, Colbert County Alabama, Tuscumbia, Alabama for observation and report as provided in the Act referred to above.

In compliance with the provisions of the Act, the Superintendant of the hospital appointed Doctor H. S. Rowe, Assistant Superintendent and Doctor A. M. Richards, Assistant Physician, who associated with the Superintend-

ent constitute the undersigned commission. After having the said, Jesse Blackburn under our study and observation continually since the above date of admission we desire to submit the following report:

[fol. v] It is the opinion of each of us, and our opinion jointly and collectively, that the said, Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948 was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged.

Under the provisions of the act referred to above, we understand that with the rendering of this report our obligation and that of the Searcy Hospital, one of the Alabama State Hospitals, has been discharged and that if it is the wish of the court that the said, Jesse Blackburn be detained longer in this institution as a patient, it would be necessary for this court or some court of jurisdiction to issue a commitment or order for the further detention of the said, Jesse Blackburn in the Searcy Hospital.

Awaiting your further order or that of the Court or the Sheriff of Colbert County.

Respectfully submitted,

Signed and executed this 6th day of January 1949 at the Searcy Hospital, Mt. Vernon, Alabama.

J. S. Tarwater, M. D., Acting Superintendent, Harry S. Rowe, M. D., Assistant Superintendent, A. M. Richards, M. D., Assistant Physician.

IN CIRCUIT COURT OF COLBERT COUNTY

[Title omitted]

ORDER TO REMOVE DEFENDENT BACK TO COLBERT COUNTY, ALABAMA JAIL—January 21, 1949

It appears that the report of the Commission of Lunacy requested in the former order entitled "Commitment to Alabama State Hospitals for Observation and Report" [fol. vi] made by this Court on the 26th day of July, 1948, has now made its report in writing to the Court in accordance with the provisions of law contained in Sections 425 and 428 of Title 15 of the 1940 Code of Alabama, and it further appears to the Court that it is now the duty of the Clerk of said Court to issue an order to the Sheriff of Colbert County, Alabama directing that such defendant be remanded and removed to the Colbert County Alabama Jail under the provisions of said Sections.

Now, therefore, it is ordered that the Clerk of said Court issue said order to the Sheriff and that such defendant be so remanded and removed and when this is accomplished that the criminal proceedings against him either be resumed or that said defendant be otherwise legally discharged. The expenses of removing such defendant from said Hospital shall be paid in the same manner as provided by law in the case of persons adjudged to be of unsound mind following inquisition in the Probate Court.

Copy of this Order shall be sent by the Clerk by United States mail, postage prepaid, to Hon. Jack Carter Reed, Attorney, Tuscumbia, Alabama, and Hon. John C. Martin, Attorney, Sheffield, Alabama, heretofore appointed as Counsel to represent said defendant and said Attorneys are hereby notified that said report of said Commission on Lunacy is on file in the Office of the Clerk for their inspection, and said Attorneys are further notified that this case is set for further consideration under the provisions of said Code Section for 9 O'clock, A. M., Wednesday, the 26th day of January, 1949.

Dated at Tuscumbia, Alabama, this the 21st day of January, 1949.

Robert M. Hill, Circuit Judge.

IN CIRCUIT COURT OF COLBERT COUNTY

ORDER OF THE CLERK TO SHERIFF FOR REMOVAL—January 24 1949

To Sheriff Lee McCorkle, Colbert County, Tuscumbia, Alabama:

You are hereby authorized and directed to remove the defendant, Jesse Blackburn from the Alabama State Hospitals (Mt. Vernon, Alabama Branch) to Colbert County, Alabama Jail and thereupon the criminal proceedings against him will either be resumed or he will by order of this Court be otherwise legally discharged. You will make due return of your action in the premises on this Writ. [fol. ii] Dated at Tuscumbia, Alabama, this the 24 day of January, 1949.

Mrs. W. Lee Stanley, Circuit Court Clerk.

CC: Hon. Jack Carter Reed, Attorney, Tuscumbia, Alabama.

Hon. John C. Martin, Attorney, Sheffield, Alabama.

2 Copies to Hon. Lee McCorkle, Sheriff, Tuscumbia, Alabama.

Mrs. W. Lee Stanley, Circuit Court Clerk.

Dr. J. S. Tarwater, Superintendent, Ala. State Hospitals, Mt. Vernon, Alabama.

Ex. Jan. 26, 1949 By going to Mt. Vernon after Jessie Blackburn on our arrival at *Sercy* Hospital we found that he had escaped.

Lee McCorkle, Sheriff, By W. G. Stanford.

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IN CIRCUIT COURT OF COLBERT COUNTY

[Title omitted]

ORDER DIRECTING RETURN OF DEFENDANT—October 20, 1952

It appears to the Court that the defendant was heretofore transferred to the Alabama State Hospitals for the Insane under the provisions of Chapter 21 of Title 15 of

the 1940 Code of Alabama under Order which required that he be returned to the custody of the Sheriff of Colbert County, Alabama, if and when he was found to be restored to his right mind.

It now appears to the Court that under date of October 7, 1952, the Searcy Hospital has certified to the Court as follows:

> "It is the opinion of the members of the staff of the Searcy Hospital that Jesse Blackburn is presently mentally competent and should be returned to the custody of this Court".

It therefore appears to the Court that the said Jesse Blackburn should be returned to the custody of this Court.

It is therefore ordered that the Sheriff of Colbert County, Alabama, be and he is hereby authorized and directed to procure the person of the said Jesse Blackburn from the Alabama State Hospitals at Mount Vernon, Alabama, and safely return him to the Colbert County Alabama Jail where [fol. viii] he shall be held pending the disposition of the criminal cases now pending against him.

The Sheriff shall make return of his action on this Writ.

Dated at Tuscumbia, Alabama, this 20th day of October, 1952.

Harold V. Hughston, Circuit Judge.

Original and two copies to Hon. Lee McCorkle, Sheriff of Colbert County, Alabama (1 copy to be left with the Searcy Hospital).

CC: Hon. W. L. Almon, Circuit Solicitor, Hon. C. A. Poellnitz, Attorney at Law.

Ex: by Returning Jessie Blackburn to Jail in Colbert County, Nov. 12th, 1952.

Lee McCorkle, Sheriff, H. J. Searcy.

IN CIRCUIT COURT OF COLBERT COUNTY

[Title omitted]

PLEAS—Filed April 15, 1953

Comes the defendant and for plea to the indictment and each count thereof, separately and severally, pleads and says, separately and severally:

Plea One

Not guilty.

Plea Two

Not guilty by reason of insanity.

Mitchell & Poellnity, Attorneys for Defendant.

Filed in office this the 15th day of April, 1953.

Mrs. W. Lee Stanley, Clerk.

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IN CIRCUIT COURT OF COLBERT COUNTY

JUDGMENT ENTRY AND SENTENCE—April 22, 1953

STATE OF ALABAMA *vs.* JESSE BLACKBURN

Now upon this the 22nd day of April, 1953 comes the State of Alabama, by its Solicitor, and comes also the Defendant in his own proper person and by attorney, and the Defendant being arraigned in open court, for answer to said indictment, pleads and says that he is not guilty and not guilty by reason of insanity.

Thereupon came a jury of good and lawful men, to-wit: Herman Isbell, and eleven others, who having been impanelled and duly sworn according to law, on their oaths say: [fols. ix-xvii] "We, the Jury, find the Defendant guilty as charged in the indictment."

It is therefore considered and adjudged by the Court that the said Defendant, Jesse Blackburn, is guilty as charged in the indictment.

And now upon this the 4th day of May, 1953, the Defendant being in open Court and being asked by the Court if

he had anything to say why the sentence of the law should not be pronounced upon him, says nothing. It is therefore considered by the Court and it is the judgment and sentence of the Court, that the said Defendant, Jesse Blackburn be imprisoned in the Penitentiary of the State of Alabama for a term of 20 years as a punishment for his offense.

Defendant gives notice of appeal and sentence is suspended pending appeal.

* * * * * * *

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[fols. 1-5] IN THE CIRCUIT COURT OF COLBERT COUNTY, ALABAMA

STATE OF ALABAMA, Plaintiff,

*vs.*

JESSE BLACKBURN, Defendant

* * * * * * *

Tried: April 22 and 23, 1953.
Presiding: Judge Robert M. Hill.

## Transcript of Testimony

APPEARANCES:

Appearing for the State: W. L. Almon, Solicitor of the 11th Judicial Circuit, Florence, Alabama, and William E. Hollingsworth, Solicitor of the 29th Judicial Circuit, Talladega, Alabama.

Appearing for the Defendant: Mitchell & Poellnitz, Florence, Alabama.

* * * * * * *

[fol. 6] W. N. GREENHILL, a witness for the State, being first duly and legally sworn, testified as follows:

Direct examination:

By Mr. W. L. Almon:

Q. Are you W. N. Greenhill?
A. Yes, sir.
Q. Where do you live?
A. In the west end of Colbert County.
Q. In what community?
A. Close to the Asphalt Rock Mines on the Cherokee route.
Q. How far from Allsboro?
A. About five miles.
Q. Did you live at the same place on Monday, April 19, 1948?
A. Yes, sir.
Q. On the date I have inquired about, that is, Monday, April 19, 1948, what business were you in?
A. General store and I was operating a rolling store.
[fol. 7] Q. Where was your store on that occasion?
A. It was, you know—well, three miles south of Margerum, where I have been eighteen years.
Q. On this date I have inquired about did you own and operate a rolling store?
A. Yes, sir.
Q. That is a truck—did you have your rolling store mounted on a truck?
A. Yes, sir.
Q. Describe the truck and rolling store you had on that occasion?
A. It was a 1941 bus that had been used by Burns Motor Company in Sheffield that I bought from them; it was a ton and a half body.
Q. What color was it?
A. It was painted light cream color *color*.
Q. It was a bus body type?
A. Yes, sir.
Q. How many doors did it have?
A. It had two folding doors that opened like a regular

bus in front and a big back door that opened on the side at the back. The rest was glassed in.

Q. You could enter it either on the left or the right on the front?

A. No, you had to come in on the right hand side at the folding doors.

Q. That was the door entering?

A. Yes, sir.

Q. This exit door, what side was it on?

A. It would be on the left.

Q. Did that have a private entrance steps?

A. No, sir.

Q. It was more or less an emergency door?

A. Yes, sir.

Q. On the occasion I have inquired about on Monday, April 19, 1948, when did you see that rolling store that morning?

A. I saw it when it left my store early that Monday morning.

Q. Did you have groceries in it?

A. Yes, a general line of groceries—feed, flour, and just general groceries.

Q. You owned that?

A. Yes, sir.

Q. Who was your Agent and operator of the rolling store in April, 1948?

A. Thomas Clyde Wright.

Q. Is this he here (indicating)?

A. Yes sir.

[fol. 8] Q. How long had he been employed by you then?

A. Several years.

Q. On this occasion what route was he traveling?

A. He went through part of the west end of Colbert County and went into Tishomingo, Mississippi and come back in by Allsboro.

Q. Did he enter or come in by way of Crowell Hill?

A. Yes, he had to come around there at that time because the big bridge was out.

Q. Describe the Crowell Hill.

A. It is close to the Mississippi State line and close to Highway 72.

Q. It is in Colbert County, Alabama?
A. Yes, and it is a pretty gradual slope.
Q. Is it a long hill?
A. It's not long; it's kind of short.
Q. Is it steep?
A. Not too steep, but it is a pretty good grade.
Q. You saw Mr. Wright leave in the morning?
A. Yes, sir.
Q. Did you see your rolling store later on that night?
A. I saw it on that Crowell Hill later that night.
Q. What direction was it headed?
A. Let me change that—I said I saw it on Crowell Hill—I met someone bringing the truck in.
Q. Where was it?
A. Coming on to the 72 Highway; someone was bringing it home.
Q. Was that after the alleged robbery?
A. Yes sir.
Q. Did you see Mr. Thomas Clyde Wright that night?
A. Yes, sir.
Q. Where was he?
A. I picked him up at Margerum; somebody brought him to Margerum in a car and I carried him to the hospital.
Q. About what time did you see him on the night of April 19, 1948?

Defendant objects because it is illegal and incompetent and is not part of the res gestae. Objection overruled. Defendant excepts.

A. I would say around 9:30.
Q. How far is Margerum from Crowell Hill?
A. About a mile and a quarter.
Q. What was his condition?

[fol. 9] A. He was bloody all over and in a dazed condition; he couldn't talk, and he was bloody all over.

Q. Did you observe any wounds?
A. Yes, the—his head was cut up here (indicating) in about three places and his ear was torn.
Q. Does he have scars now?
A. Yes, up there on his head.
Q. On the left?
A. Yes, sir.

Q. Will you come and look at it—you say he was bleeding from the head?

A. Yes, sir.

Q. What side?

A. His left side.

Q. Were there any other injuries?

A. He had three—about three places on his head.

Q. Was he himself then, or did he talk disconnectedly?

Defendant objects because that is repetition and is illegal. Objection sustained.

Q. Did you take him to the doctor?

A. Yes, I took him to the hospital.

Q. What doctor?

A. Dr. Gary in Sheffield.

Q. Did Thomas Clyde Wright on the morning when he left the store have some of your money in his possession?

A. Yes, sir.

Q. Was some of it currency and some coined money?

Defendant objects because there is no connection or no relation to the time of the alleged offense.

By Mr. Almon:

Q. When he left, the last time you saw him on the morning of April 19, 1948?

Defendant objects——

Question withdrawn.

Q. When you last saw Mr. Thomas Clyde Wright before on that same day when did you see him?

Defendant objects because there are two questions and because the question assumes a fact that is not in issue and because it has no relation to the time of the alleged offense. Objection sustained.

Q. When did you last see Mr. Thomas Clyde Wright before you saw him injured?

[fol. 10] Defendant objects to that part of the question 'before you saw him injured'. Objection overruled. Defendant excepts.

A. I saw him that morning when he left.

Q. At that time did he have some money belonging to you?

A. Yes, sir.
Q. Did he have a pocket book that belonged to you?
A. Yes, sir.
Q. That belonged to you?
A. Yes, sir.
Q. In his possession?
A. Yes, sir.
Q. Describe that pocket book?
A. It was about that long (indicating).
Q. Was it what you call a billfold?
A. Yes, about three and half or four inches wide, a regular billfold, and it had a strap on it to fasten it with.
Q. You have seen billfolds sold and have bought and sold them?
A. Yes, sir.
Q. What was the fair cash market value of that billfold the last you saw it?
A. About $3.50.
Q. About how much money did he have of yours on him when he left that morning?
Defendant objects because it is illegal, irrelevant and incompetent. Objection overruled. Defendant excepts.
Question withdrawn.
Q. You say he did have some money of yours?
A. Yes, sir, he did.

Cross-examination.

By Mr. Charles A. Poellnitz:

Q. Mr. Greenhill, I believe it is your testimony that you saw Mr. Wright in the morning of April 19, 1948?
A. Yes, sir.
Q. Then you didn't see him again until you saw him in Margerum that night?
A. That's right.
Q. You didn't see him in the intervening time?
A. No, sir.
Q. Will you tell approximately what time he left your place of business?
A. He left out early, approximately six o'clock, I would say.

[fol. 11] Q. Will you tell us approximately the time you saw him in Margerum that you related?

A. About 9:30 I picked him up.

Q. That was the same day?

A. Yes, sir.

Q. What did you call the hill?

A. Crowell.

Q. Was it paved at that time?

A. No, it was a gravel road.

Q. And how far is it from the main highway?

A. About a quarter of a mile or approximately that.

Q. I mean U. S. Highway 72?

A. Yes, sir, that's right.

Q. It's about a quarter of a mile from the intersection of that road and U. S. Highway 72?

A. Approximately, yes.

Q. Where does that road lead to?

A. Allsboro.

Q. How far is Allsboro from the intersection of Crowell Road and the Highway?

A. About six and a half miles I would say.

Q. That road is now paved, isn't it?

A. Yes, sir.

Q. The country on either side of the road from the intersection to Allsboro is thickly populated, isn't it?

A. There are several houses in there.

Q. Was that one of the regular routes you had?

A. He had to come around that way since the bridge was out to get home.

Q. Did you sell groceries on that road?

A. No, we operated in Mississippi; of course, some in Alabama, but most of it was in Mississippi.

Q. Had he on that date been into the State of Mississippi?

A. Yes, sir.

Q. As far as you know?

A. Yes, sir.

[fol. 12] THOMAS CLYDE WRIGHT, a witness for the State, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Almon:

Q. Is your name Thomas Clyde Wright?

A. That's right.

Q. On Monday, April 19, 1948, who were you working for?

A. W. N. Greenhill.

Q. How long had you been working for him prior to that?

A. About five years.

Q. On this date and five years prior to that were you driving a rolling store for Mr. Greenhill?

A. Yes, sir.

Q. Did you leave his store that morning?

A. Yes, around six o'clock.

Q. Did you have some of his money on you?

A. I started out with Fifty Dollars in bills and the change.

Q. On that occasion did you have a billfold that belonged to Mr. Greenhill?

A. Yes, sir.

Q. The same one he described?

A. Yes, sir.

Q. On that occasion did you have another billfold of your own?

A. Yes, sir.

Q. Describe it.

A. It was about that long (indicating), and I had four ten-dollar bills and two five-dollar bills and one one-dollar bill of my own money.

Q. Was that what you call lawful currency of the United States of America?

A. Yes, sir.

Q. This billfold—have you bought them and seen them sold on the market?

A. Yes, sir.

Q. What was the cash market value of your billfold as of April 19, 1948?

A. About $3.50.

Q. From $3.00 to $3.50?

A. Yes, from $3.00 to $3.50.

Q. But your best judgment is that it was reasonably worth $3.00?

A. Yes, sir.

Q. You left there about six o'clock?

[fol. 13] A. Yes, sir.

Q. Where did you go?

A. I left there and went through by Margerum and into Mississippi by the same road.

Q. What Road?

A. The Allsboro Road; I went into Mississippi on that road by Reid's gin.

Q. Where else did you go?

A. I went over into Tishomingo County.

Q. How far did you go into that County?

A. I imagine around fifteen miles.

Q. Did you make some sales that day?

A. I always do.

Q. What time did you get back into Alabama or Colbert County—was it after dark?

A. Yes, sir.

Q. How did you come back into Colbert County?

A. I come back in by Allsboro like I always did, back up Crowell Hill.

Q. Crowell Hill is on the Road from U. S. Highway 72 to Allsboro?

A. Yes, sir.

Q. At that time it wasn't paved?

A. No, sir.

Q. It is paved at the present time?

A. Yes, sir.

Q. Do you remember getting to the Crowell Hill?

A. No—in a way I do—I remember going across the creek, and before I got to the steep part of the hill, I had to go in double low in the truck, and it seems to me I saw someone coming off the bank——

Defendant objects to what it seemed to him.

Q. Is that your best judgment?

A. Yes, sir.

Defendant objects because it is illegal, irrelevant, and incompetent.

Objection overruled. Defendant excepts.

Q. It seems you remember somebody coming from where?

A. Off the bank in toward the road, and had something in his hand that looked like a gun?

Q. Was it shining?

A. Yes, sir.

Q. Was he white or black?

[fol. 14] A. All I remember I woke up in a hospital two weeks after that—that's all I remember.

Q. Do you remember stopping the truck?

Defendant objects to his leading the witness; he said that's all he remembers.

By Mr. Almon: I have a right to ask what he remembers—he was out two weeks.

Defendant objects to the statement of the solicitor that 'he was out two weeks', and ask the court to exclude that from the jury.

By the Court: Gentlemen of the jury, statements of attorneys on either side are not evidence in a case. You decide the case only from the evidence from the mouths of witnesses on the stand. As to the last question asked, the objection is overruled. Defendant excepts and asks the court to exclude the statement of the solicitor as to the condition of the witness.

By Mr. Almon: I am going to prove it.

By the Court: Both statements of the solicitor are excluded. As I said, gentlemen, of course, statements of attorneys of what they expect to prove are not evidence, so the last two statements are excluded, and please don't consider them when you deliberate.

MOTION FOR MISTRIAL AND DENIAL THEREOF

Defendant moves at this time for a mistrial because of the remarks of the solicitor.

Motion for a mistrial overruled. Defendant excepts.

A. No, sir.

Q. Do you remember going up the hill or entering it?

Defendant objects——

By Mr. Almon: This was before he was hit.

Defendant objects because he said he didn't remember and the solicitor is trying to put the words in his mouth. Objection overruled. Defendant excepts.

A. I remember starting up the hill.

Defendant objects to the solicitor's remark in the presence of the jury 'this was before he was hit' and ask for a mistrial and that the case be continued.

By the Court: Gentlemen of the jury, the solicitor's remark 'this was before he was hit' is excluded; it is not evidence and is not to be considered by you when you deliberate, and the defendant's motion for a mistrial is overruled. Defendant excepts.

Q. Where were you at that time?

[fol. 15] A. I was starting up the hill.

Q. What hill?

A. Crowell Hill.

Q. Is that Crowell Hill in Colbert County, Alabama?

A. Yes, I started up it.

Q. At that time did you have any money, lawful currency, belonging to you?

A. Yes, I had four ten-dollar bills, two five-dollar bills, and one one-dollar bill.

Q. Did you have two billfolds on you?

A. Yes, sir.

Q. Did one belong to you and one to Mr. Greenhill?

A. Yes, sir.

Q. How much money did you have at that time belonging to Mr. Greenhill?

A. I had around seventy-six dollars in my possession.

Q. Was that some lawful coined money of the United States of America?

A. Yes, sir.

Q. Was some of it lawful currency of the United States of America?

A. Yes, sir.

Q. And you don't know how to describe that currency?

The defendant objects to his leading the witness. Objection sustained.

Q. When you regained consciousness—When did you regain consciousness?

Defendant objects because it is illegal, irrelevant and incompetent.

By Mr. Almon: He said he was knocked out.

By the Court: Mr. Almon, don't argue; let me rule. Objection overruled. Defendant excepts.

A. Two weeks later.

Q. Where were you when you regained consciousness?

A. At the hospital.

Q. Which one?

A. Out here.

Q. When you regained consciousness did you have either or both of the billfolds on you?

Defendant objects because it is illegal, irrelevant, incompetent, and is in no way connected with the alleged crime; it is speculative and subject to conjecture. Objection overruled. Defendant excepts.

By Mr. Almon: Read the question so we won't have any more objections.

By Mr. Poellnitz: We are not objecting because of our health. We object because of the questions he asks and the manner in which he asks them.

[fol. 16] By the Court: Both sides have a right to object, and I again ask that we have no arguments across the table; direct the objections to me.

(The court reporter reads the question to the witness.)

A. No.

Q. State whether or not when you regained consciousness you had the $51.00 you described to the Jury that you had in your possession—Did you?

Defendant objects because it is illegal, irrelevant, incompetent, and is in no way connected with the alleged crime; it is speculative and subject to conjecture. Objection overruled. Defendant excepts.

A. No.

Q. When you regained consciousness did you have the $76.00 consisting of lawful coined money and lawful currency of the United States of America which belonged to Mr. W. N. Greenhill in your possession?

Defendant objects because it is illegal, irrelevant, incompetent, and is in no way connected with the alleged crime; it is speculative and subject to conjecture. Objection overruled. Defendant excepts.

A. No.

Q. Is Crowell Hill, where you say you last remember putting your car in double or super low, in Colbert County, Alabama?

A. Yes, sir.

Q. Were you in Colbert County, Alabama, when you last remember anything on that night?

A. Yes, sir.

Q. In your travels that day did you travel near a road where a colored man, Jack Thorne, lived?

A. Yes, sir.

Q. Where did he live?

A. In Colbert County.

Q. Where?

A. Just across the new Bear Creek bridge, just before you get to the Mississippi State line, about a mile this side of the Mississippi State line.

Q. Do you know Jack Thorne?

A. Yes, sir.

Q. How well did you know him?

Defendant objects because it is illegal, irrelevant, incompetent, and immaterial. Objection overruled for the time being.

A. I went by there three times a week.

[fol. 17] Q. On or about the 13th of April, 1948, five or six days prior to the time you lost consciousness on Crowell Hill, did you have occasion to be by Jack Thorne's house?

A. Yes, sir.

Q. On about that time did they buy something from you?

A. Yes, sir.

Q. Who did?

A. Jack and his wife.

Q. Where were they?

A. Right in front of the house.

Q. Who else was present on the occasion of the purchase?

A. Three more boys.

Q. Did you know them?

A. I knew Jack's half-brother.

Q. What's his name?

A. I can't call it now.

Q. State whether or not it is Dennis?

A. Yes, Dennis Thorne.

Q. Did you recognize him on this occasion?
A. Yes, I carried him to school twice.
Q. There were two other colored men there?
A. Yes, sir.
Q. Did you know them?
A. No, sir.
Q. Did you recognize either of them as being the defendant over there, Jesse Blackburn?
A. Yes, sir.

Defendant objects and moves to exclude the answer because it is not connected with the alleged offense on the date in the indictment, and it is illegal, irrelevant, incompetent, and is not part of the res gestae.

By Mr. Almon: We will connect it later.

By the Court: You said 'at that time'—will you please let the court know what time.

By Mr. Almon: That is on April 13, 1948.

Objection overruled. Defendant excepts.

Q. At that time did you know the defendant, Jesse Blackburn?
A. No, I didn't know him.
Q. This third man there, did you know him at that time? [fol. 18] Defendant objects to the question on the ground that it involves a date not here in issue, and it is illegal, irrelevant and immaterial.

By the Court: Objection overruled with the statement that the court understands the date is April 19th.

By Mr. Poellnitz: The date is April 13th.

Objection overruled. Defendant excepts.

Q. Do you positively identify the defendant over there, Jesse Blackburn, as being near Jack Thorne's house on April 13, 1948?
A. Yes, sir.

Defendant moves to exclude the last question and answer on the ground that it is not part of any issue in this case, and is illegal, irrelevant, and immaterial.

Motion overruled for the time being. Defendant excepts.

Q. State whether or not you remember purchases being made by the person I have inquired about on the occasion?

Defendant objects because it is not part of any issue in this case, and is illegal, irrelevant, and immaterial. Objection overruled. Defendant excepts.

A. Yes, he bought some cigarettes.

Q. State whether or not you remember the denomination of money someone gave you?

Defendant objects because it is not part of any issue in this case, and is illegal, irrelevant, and immaterial. Objection overruled. Defendant excepts.

A. He give me a twenty-dollar bill.

Q. Who did?

A. One of the three boys; I believe it was this boy here.

Q. It was one of the three?

A. Yes, sir.

Q. Did these three men live in that community at that time?

A. No, they hadn't been living there long; they hadn't been there more than two or three days.

Q. You hadn't seen Dennis Thorne there before but two or three days?

A. No, sir.

Q. Or Robert Howell?

A. No, sir.

Q. Or Jesse Blackburn?

A. No, sir.

Q. State whether or not at that time you saw a maroon Buick automobile?

[fol. 19] Defendant objects because it is not part of any issue in this case, and is illegal, irrelevant, and immaterial. Objection overruled. Defendant excepts.

Q. State whether or not——

A. Yes, I saw it.

Q. When did you see the Buick automobile in that community?

A. It was parked there in front of the house those days, from the 13th.

Q. Parked where?

A. At Jack Thorne's house.

Q. Jack Thorne is Dennis Thorne's half-brother?

A. Yes, sir.

Q. Do you remember the tag on the automobile?

A. It was an Illinois tag.

Q. You saw it on that occasion and several others?

A. Yes, sir.

Q. When you were going up the hill there at that time you didn't have any wounds on your head or ear?

A. No, sir.

Q. When do you remember observing the wounds—when you came to?

A. Yes, when I came to.

Q. Will you show them to the Jury?

A. Yes, sir.

(The witness leaves the witness stand and goes to the Jury and starts talking.)

By the Court Reporter: I can't hear you, Mr. Wright.

Defendant objects to his statement to the jury.

By the Court: That's excluded, gentlemen, whatever the statement was.

Q. Who was the doctor that attended you for those wounds?

A. Dr. Loren Gary attended me so he said.

Q. Dr. Gary attended you?

A. Yes, sir.

(No cross-examination.)

By Mr. Almon:

Q. You say this $76.00 of Mr. Greenbill's was lawful currency of the United States of America and lawful coined money of the United States of America?

Defendant objects on the ground that it is repetition and on the further ground that the witness was examined by the State and terminated and it is illegal, irrelevant and incompetent. Objection overruled. Defendant excepts.

[fol. 20] Q. Is that right?

A. Yes, sir.

Q. This four ten-dollar bills and two five-dollar bills and one one-dollar bill of lawful currency of the United States of America was in your possession before you were knocked unconscious?

Defendant objects and moves to exclude the statement 'knocked unconscious'.

By Mr. Almon: I withdraw the part 'knocked unconscious'.

Objection overruled. Defendant excepts.

By Mr. Almon: I will withdraw the question.

Q. Was this four ten-dollar bills and two five-dollar bills and one one-dollar bill lawful currency of the United States of America?

Defendant objects on the ground that it is repetition and on the further ground that the witness was examined by the State and terminated and it is illegal, irrelevant and incompetent. Objection overruled. Defendant excepts.

A. Yes, sir.

Q. Was that your own money?

A. Yes, sir, that was.

(No cross-examination.)

By the Court:

Gentlemen of the Jury, we have decided we would take the noon recess now. You will eat at the V-Grill and Mr. Searcy will be with you, and please stay together and eat together, and don't let anybody talk to you about the case, and the best way is not to talk to anybody about anything. The reason I say that, the law puts the burden on the Judge to see that that rule is strictly enforced, and if we don't go by that rule, we are doing it according to the way the law says; so, you are excused to be back— Mr. Searcy, do you think you can be back at 1:15?

By Mr. Searcy: I think so.

You are excused under those instructions until 1:15.

[fol. 21] (After Lunch.)

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W. G. Stanford, a witness for the State, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Almon:

Q. State your name, please?

A. W. G. Stanford.

Q. Are you at the present time Chief Deputy Sheriff of Colbert County, Alabama?

A. I am.

Q. How long have you been such officer?
A. Since, 1947.
Q. Were you such officer on Monday, April 19, 1948?
A. Yes, sir.
Q. On that date I have inquired about did you have occasion to go down on the Allsboro Road and make an investigation as to an alleged robbery?
A. I did.
Q. Where were you when you got the message?
A. I was at home.
Q. You live in Sheffield, Alabama?
A. That's right.
Q. Do you now have any independent recollection about when you received the call?
A. I got the call somewhere around between nine or nine-thirty to the best of my remembrance, or maybe ten o'clock.
Q. Where did you go after that?
A. I went west on Highway 72 until I come to the Allsboro Road and turned left and went until I come to where the accident—to where the call—to answer the call we got.
Q. Do you know where Crowell Hill is in Colbert County?
A. Yes, sir.
Q. Did you go at or near it?
A. Yes, sir.
Q. Who did you go with?
A. Charlie Bradford.
Q. Is he sick now?
A. He is in the T. B. Hospital in Decatur.
Q. When you got to the Crowell Road on that occasion, tell what you saw?
[fol. 22] Defendant objects on the grounds that it is illegal, irrelevant, incompetent and the corpus delicti has not been proven. Objection overruled. Defendant excepts.
A. There was a rolling store truck.
Q. For the purpose of the record about what time of night on April 19, 1948 did you arrive at the scene of the rolling store truck?
A. I would have to guess between 10:30 and 11:30.
Q. Tell the Jury where the rolling store was that you said you saw?

A. It was coming north on the Allsboro Road; it was something like about a third of the way up the hill and it was headed north.

Q. Was it parked at that time?

A. Yes, and had some rocks chocked under the wheels to keep it from rolling back.

Q. Well, tell what your investigation—tell what you did?

Defendant objects because it is too general.

By the Court: Objection sustained as to the first part, but overruled as to the last part. Defendant excepts.

A. The first thing we done, we went inside the truck.

Q. Tell what you found, if anything, inside the truck?

A. Well, there was quite a bit of blood on the floor boards and in the aisle and on the seat and there was a tire tool or a bar pointed like a tire tool and there was two hats, and I think that's about all I remember picking up at the time.

Q. These two hats and tire tool and the blood was all inside the rolling store?

A. Yes, on the inside of the rolling store truck.

Q. What was the condition of the tire tool?

A. It had blood on it.

Q. Do you have now in your possession the two hats found in the rolling store and the tire tool at the time you made your investigation?

A. I do.

Q. Will you produce them?

(Witness gets box.)

Defendant objects to the production of the items referred to by the Solicitor because there is no identification between the items involved and the defendant, and they would be inflamatory and prejudicial, and they have no bearing on the case.

Objection sustained for the time being.

Q. I will ask you to look at this brown hat here——

[fol. 23] Defendant objects because there is no identification between the hat involved and the defendant, and that would be inflamatory and prejudicial, and it has no bearing on the case.

By the Court: We sustained the objection to the exhibition of the items at this time.

By Mr. Almon: I would like to identify them to introduce them.

By the Court: Do you have some evidence to connect them?

By Mr. Almon: Yes, sir.

By the Court: If you have any evidence to connect the defendant, I suggest that you put it on.

By Mr. Almon: It's part of the tool that will be proved later that was used: it is part of the res gestae, and the two hats found. We will show one was put there by the defendant.

By Mr. Poellnitz: We understand the Court has sustained the objection to them?

By the Court: Yes.

The defendant moves to exclude the remark of the Solicitor that 'we will show one was put there by the defendant'.

By the Court: The Solicitor is talking to the Court, so, gentlemen of the Jury, I say again that statements of the attorneys are never evidence in a case so please don't consider that when you deliberate.

MOTION FOR MISTRIAL AND DENIAL THEREOF

The defendant, because of the remark made by the Solicitor in the presence of the Jury, moves for a mistrial and asks that the case be continued. Motion overruled. Defendant excepts.

By Mr. Almon: It is part of the res gestae, and we will introduce the other evidence later.

By the Court: All right, I will change the ruling and let you exhibit them for identification purposes.

The defendant excepts.

By Mr. Almon:

Q. I have a brown hat in my hand that says 'Porter's Browncraft Sterling' on one side and 'Harris Men's Wear, 551 East 47th Street, Chicago, Illinois' on the other side, will you look at that hat and see if you identify that as one of the hats found in the rolling store?

A. That hat was picked up inside the rolling store and

put with the other stuff we have and has been locked in the jail vault ever since.

Q. Is it practically and substantially in the same condition as it was then?

[fol. 24] A. Yes, except the moths have eat it; it was good then.

We identify this hat as Exhibit "A".

The defendant objects to the introduction of the hat——

By Mr. Almon: We haven't offered it in evidence.

Q. I have in my hand another hat here that says 'War chief' on one side and 'Supreme Quality' on the other side, a brown hat, will you look at that hat and see if you can identify it as being one of the hats found in the rolling store?

A. That's the hat I tagged; it says 'Found in truck on night of April 19th, property of Jesse Blackburn, worn by Jesse Howell'.

By Mr. Almon: We don't insist on that.

MOTION FOR MISTRIAL AND DENIAL THEREOF

Defendant moves for a mistrial because of the reading of that; it is illegal, irrelevant, incompetent, and highly prejudicial, and the corpus delicti has not been proven.

By the Court: The motion is overruled. Gentlemen of the Jury, the last answer made by the witness, wherein he read from a notation he made on the hat—that part is excluded, and please don't consider that when you deliberate.

By Mr. Almon: The State wants that hat marked Exhibit "B" for identification.

Q. I hand you a steel instrument and ask you to look at it and tell what it is?

A. That is known as a tire tool.

Q. Look at it and see if that is the tire tool you say you found in the rolling store on the night of April 19, 1948?

Defendant objects because it is illegal, irrelevant, incompetent, and the corpus delicti has not been proven. Objection overruled. Defendant excepts.

A. It was picked up on the floor of the rolling store, and it has been with the other stuff that we got out of the truck in that box there, and there was blood on this tire tool.

Q. Is that instrument identified as a tire tool substan-

tially in the same condition as it was then except some blood has dried?

A. Yes, sir.

Q. It is the same instrument?

A. Yes, sir.

Q. Have these hats offered for identification and the tire tool been in your possession since you found them in the rolling store on the night of April 19, 1948?

[fol. 25] Defendant objects because it is illegal, irrelevant, incompetent, and the corpus delicti has not been proven. Objection overruled. Defendant excepts.

A. It has been in this box with the hats and the other stuff under lock and key at the jail in the vault since we brought it in that night.

Q. After you made the investigation, did you some time after that see the defendant there, Jesse Blackburn?

A. Yes, sir.

Q. Where did you see him?

A. I next saw him at the County jail.

Q. On about May 8, 1948, did you have occasion to talk to the defendant, Jesse Blackburn?

A. I talked to him after they brought him back from Gary, Indiana.

Q. Where were you when you talked to him?

A. At the County jail.

Q. Who was present?

A. Part of the time Bo Riner.

Q. For the record, that is James H. Riner, a deputy sheriff, and he was a deputy sheriff at that time?

A. Yes, and Sheriff McCorkle.

Q. Did you talk to him or or about May 8, 1948?

A. Yes, sir.

Q. Was it morning or afternoon?

A. I think it was along after dinner time when I first started talking to Jesse.

Q. At that time did you or Sheriff McCorkle or James H. Riner or anyone else in your presence or hearing offer the defendant any inducement to get him to make a statement?

A. No, sir.

Q. Did you or Sheriff McCorkle or James H. Riner or anyone else in your presence or hearing tell the defendant

it would be better for him if he made a statement or worse for him if he didn't make a statement?

A. No, sir.

Q. Did you or Lee McCorkle or James H. Riner or any one else in your presence or hearing tell the defendant if he made a statement it would be lighter on him?

A. No, sir.

Q. Did you or Sheriff McCorkle or James H. Riner or anyone else in your presence or hearing threaten the defendant to get him to make a statement?

[fol. 26] A. No, sir.

Q. Did you or Lee McCorkle or James H. Riner or any one else in your presence or hearing tell the defendant it would be worse on him if he did not make a statement?

A. No, sir.

Q. What statement did he make to you?

The defendant objects because the corpus delicti has not been proven, and the defendant can be shown not to have had the mental capacity to be a witness on May 8, 1948, and we offer to show that in conformity with Section 439, Title 7 of the Code of Alabama, with reference to the statement the gentleman is talking about, and we want to offer to prove those facts before the Court rules on the admissibility of the statement, and we more specifically offer to show in evidence by depositions of Dr. Tarwater and Dr. Rowe that this man did not have the mental capacity on May 8, 1948 to be a witness and make a statement, and we object on the further ground that no predicate has been laid, and it is illegal and incompetent, and we offer to prove that on May 8, 1948 this man was suffering——

The State objects to all of this in the presence of the jury.

By the Court: He has to get his objection in the record, and I have told the jury that the statements of attorneys are not evidence in the case.

By Mr. Poellnitz: —From a mental disease known as schizophrenic of the paranoid type, a form of dementia praecox, and that such disease deprived him of the mental capacity to be a witness against himself, and we offer to show through the testimony of the duly qualified officer of the Veterans Administration, who is also Custodian of the Records of the Veterans Administration, that this man

had also suffered from the disease since 1944, and that subject to order of this Court, a lunacy commission was appointed to observe the defendant and such commission reported to this Court that the man was mentally incompetent on May—or before May 8, 1948. We offer to offer this on voir dire as to whether or not it was a voluntary statement.

By the Court: Gentlemen of the jury, will you retire and we will call you back later.

(The jury left the courtroom.)

[fol. 27] By the Court to the Attorneys:

Gentlemen, this exact question was dealt with in our recent case of Redwine v. State; I have it before me, and I think we might hear from each side as to what you think the law was as pronounced by those two Courts.

(The Court reads the Redwine case.)

By the Court: For the time being, the Court will sustain the objection to the last question asked the witness. The Court offers to allow the defense to prove at this stage of the case the matters which they have offered to prove, but the Court rules that the same should be received by the Court not in the presence of the jury, but while the jury is out of the courtroom, and to this latter ruling of the Court the defendant reserves an exception.

(The witness, W. G. Stanford is excused from the stand.)

DEFENDANT'S TESTIMONY ON VOIR DIRE

The defendant offers the direct testimony taken on deposition of Dr. Harry S. Rowe. If the Court will permit me, I will take this apart and one will head the question and one will read the answer.

By Mr. Almon: We have no objection to his offering it in entirety with the exception of some exhibits attached—one is a report of the Lunacy Commission, which is not admissible, and one is your Honor's order committing him, which is not admissible. We have no objection to the testimony of the doctors.

By Mr. Poellnitz: We offer the deposition of Dr. Harry S.

Rowe, and we introduce the order appointing the commissioner, the affidavit to take the deposition, and the direct questions and answers.

By Mr. Hollingsworth: The State will agree, if the defendant will, to introduce all these interrogatories and answers, and if these gentlemen will agree to the cross-interrogatories and answers by the State, it will speed it up.

By Mr. Poellnitz: We want to speed it up, but they have the cross-examination and they can introduce that.

By the Court: What they are doing is agreeing to offer the whole paper and let me read it instead reading the questions and answers.

By Mr. Hollingsworth: The Interrogatories are the best evidence and it would save the lady having to put it in the [fol. 28] record.

By Mr. Poellnitz: We are willing to do that insofar as Dr. Tarwater and Dr. Rowe are concerned.

By Mr. Hollingsworth: There were three doctors on that Board and we crossed Dr. Richards, and we want you to have it all.

By Mr. Poellnitz: We are introducing only the depositions of Dr. Tarwater and Dr. Rowe; we do not offer the deposition of Dr. Richards.

By the Court: By agreement you can offer the two; that is, Dr. Tarwater and Dr. Rowe, and then they can offer the other.

By Mr. Almon: The State objects to the lunacy report; it is my understanding a lunacy report is never admissible.

By Mr. Poellnitz: That is not my understanding; I would be glad to argue it and submit authorities on it, but if we are going to introduce the two doctors' depositions and let the Court read them rather than read them from the stand, I am ready to do that.

By the Court: Come back to the stand, Mr. Mitchell, and read the deposition.

By Mr. Almon: We have no objection to their referring to the report, but we say it is not admissible.

By Mr. Poellnitz: We say it is admissible when we have proven it like we have here.

By the Court: When they come to the offering of it, you can object then, I have nothing to rule on now.

## Deposition of Dr. Harry S. Rowe

State of Alabama,
Colbert County, Circuit Court.

To Hon. John R. Higgins, of Mobile, Alabama, Greeting:

Know Ye, that we, reposing confidence in your integrity, skill, and ability, have appointed you Commissioner to take the testimony of Dr. Harry S. Rowe, a material witness for the defendant in the causes now pending in the Circuit Court of Colbert County, Alabama, brought by the State of Alabama under indictments against Jesse Blackburn, as defendant, and we hereby authorize and empower you to [fol. 29] call and cause to come before you Dr. Harry S. Rowe, the said witness and his deposition on oath to take as well for the state as for the defendant touching his knowledge of the matters and things in controversy in said causes, which deposition, when so taken shall be signed by said witness and certified by you as Commissioner acting herein; and you are further commanded, the deposition, when so taken with this commission to return under your hand and seal to the Clerk of said court with all convenient speed.

Witness my hand this, the 15 day of April, 1953.

(S.) Mrs. W. Lee Stanley, Clerk.

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In the Circuit Court of Colbert County, Alabama
State of Alabama

Case No. 8521 and Case No. 8522

State of Alabama

vs.

Jesse Blackburn

Affidavit to Take Deposition

Before me, Leo Berryman, Jr., a Notary Public, in and for said State and County, personally appeared Jesse

Blackburn, who, being by me first duly sworn, deposes and says:

That he is the defendant in the above styled cases; that he desires to take the deposition of Dr. Harry S. Rowe who resides more than 100 miles from Tuscumbia, Alabama, the place where the above causes are set for trial, computed by the route usually travelled; and that the testimony of said witness is material for the defendant in the defense of this cause and his evidence to be secured by this deposition will be material evidence for the defendant on the trial of these causes and that said witness resides at Mt. Vernon in the County of Mobile, Alabama, and that the defense, or a material part thereof, depends exclusively on the testimony of the said witness.

This, the 6th day of April, 1953.

(S.) Jesse Blackburn, Defendant.

Sworn to and subscribed before me on this, the 6th day of April, 1953.

(S.) Leo Berryman, Jr., Notary Public, State at Large.

[fol. 30] Interrogatories to Dr. Harry S. Rowe

Now comes the defendant and propounds interrogatories to Dr. Harry S. Rowe, a witness whose testimony, when taken, will be material evidence for the defendant on the trial of the above causes.

First Interrogatory

Please state your name, age, address, occupation, and official title.

Answering the first direct interrogatory, he says:

My name is Harry S. Rowe. I am 55 years of age. My address is care of Searcy Hospital, Mt. Vernon, Alabama. I am a physician, and my official title is Assistant Superintendent of the Searcy Hospital, at Mt. Vernon, Alabama.

Second Interrogatory

Please briefly state your qualifications as a physician and your experience and training as such. What field of medicine have you specialized in? Please briefly relate your experience and training in the field of medicine in which you have specialized. How many years have you specialized in the treatment of insane persons and mental diseases? Please state approximately how many patients you have seen suffering with mental disorders and diseases during the years of your experience in treating such cases.

Answering the second direct interrogatory, he says:

I graduated from Emory University, in Atlanta, in the medical department, in 1922, as MD. Then I served a rotating internship at the City Hospital in Mobile for one year, and since that time I have been connected with the Searcy Hospital as a physician on the staff. I suppose my practice would be mostly general practice, and the patients they have been in the hospital here—all psychopathic patients or supposed to be, so that would be considered a general practice and psychopathist. Actually I have never specialized in anything, but all my work since I finished my internship in 1923, has been with *psychoathic* patients in the Searcy Hospital in Mt. Vernon. I have been on the staff of the Searcy Hospital at Mt. Vernon since 1923, and the Searcy Hospital is a part of the Alabama State Hospitals. As to the number of patients that I have seen suffering with mental disorders and diseases during the years of my experience in treating such cases, I would say that presently we have in the hospital here twenty two hundred and about eighty patients. For the past twenty-nine years I have probably seen 200 new pa- [fol. 31] tients a year.

Third Interrogatory

Were you in the year 1948 appointed or commissioned by or in pursuance of an order of the Circuit Court of Colbert County, Alabama, to investigate the insanity of one Jesse Blackburn, colored, under indictment for robbery and assault with intent to murder? If so, please state whether or not the attached paper marked Exhibit A to

these interrogatories is a true and correct copy of the order under which you made such investigation.

Answering the third direct interrogatory, he says:

Yes, I was so appointed and commissioned. Yes, the paper marked Exhibit A, attached to the interrogatories, is a true and correct copy of the order under which I made such investigation.

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EXHIBIT A

STATE OF ALABAMA,
Colbert County:

IN THE CIRCUIT COURT

Cases No. 8522—Robbery;

8521—Assault with Intent to Murder

STATE OF ALABAMA

vs.

JESSE BLACKBURN

Commitment to Alabama State Hospitals for Observation and Report

It appears this defendant is now incarcerated in the Colbert County jail charged as above listed and has heretofore been in the mental ward of the U. S. Government Veterans' Facilities and has in his possession two commitments to mental institutions for observation and it having been made to appear to the Judge by the testimony of the Sheriff and Jailer that there is reasonable grounds to believe that said defendant may be insane, the undersigned Judge has instituted an investigation and called three respectable physicians and other credible witnesses and under the provisions of Section 428 of Title 15 of the 1940 Code of Alabama, and from said ex parte examination, the Court is of the opinion that there is reasonable ground to believe that the defendant was insane either at the time of the commission of such offense or at the present time.

Now, Therefore, it is hereby ordered that such defendant

be delivered by the Sheriff of Colbert County, Alabama, to the Superintendent of the Alabama State Hospitals, who is charged with the duty of placing such defendant under the observation and examination of himself and two members of his medical staff to be named by him consti- [fol. 32] tuting a commission on lunacy with the view of determining the mental condition of such defendant and the existence of any mental disease or defect which would affect his present criminal responsibility or his criminal responsibility at the time of the commission of the crime. Said defendant shall remain in the custody of the Superintendent of the Alabama State Hospitals and subject to the observation of and examination by such commission of lunacy for such length of time as may in the judgment of the commission of lunacy be necessary to determine his mental condition so far as it affects his criminal responsibility.

As soon as such commission of lunacy has reached a conclusion within the time and in the respects as hereinabove set forth, as to the mental condition of such defendant, it shall make a full written report thereof to the Clerk of the Circuit Court of Colbert County, Alabama, Tuscumbia, Alabama, said Court being the Court in which the indictment against said defendant is pending, which report shall be placed on file and be accessible to the Court, to the Solicitor, and to the Counsel appointed by the Court to represent the defendant, to-Wit: Hon. Jack Carter Reed, Attorney, Tuscumbia, Alabama, and Hon. John C. Martin, Attorney, Sheffield, Alabama.

It is further ordered that said defendant remain in the safe custody and control of the Authorities of the Alabama State Hospitals, and if on the coming in of said report, it is shown to be that the defendant is sane, then the Superintendent of said Alabama State Hospitals must inform the Judge of this Court and the Sheriff of this Court, whereupon said defendant must be remanded to the County jail of Colbert County, Alabama, and criminal proceedings be resumed against him.

It is further ordered that this order is authority to pay the Doctors appointed by the Court for their efforts expended in the examination, and the authority for the Sheriff to *the* compensated for removing said defendant

to the State Hospital for the insane at Tuscaloosa, Alabama.

Copies of this order shall be placed in the offices and with the officials as listed below:

Done and ordered in open court, this the 26th day of July, 1948.

(S.) Robert M. Hill, Circuit Court Judge of Colbert County, Alabama.

Copies for: Mr. Lee McCorkle, Sheriff, Colbert County, Alabama.

Mrs. W. Lee Stanley, Circuit Court Clerk, Tuscumbia, Alabama.

[fol. 33] Dr. W. D. Partlow, Superintendent, Alabama State Hospitals, Tuscaloosa, Alabama; Circuit Court file.

W. L. Almon, Solicitor of the 11th Judicial Circuit, one copy to the Attorneys for defendant.

Fourth Interrogatory

Please state whether or not you made such investigation of the mental condition of the said Jesse Blackburn in conformity to the order identified as Exhibit A. Please also state the names of the other doctors who acted on such lunacy commission with you. Did you and the other doctors you have named report your findings from such investigation to the judge of the Circuit Court of Colbert County, Alabama? Was such report dated January 6, 1949, and is the attached paper marked Exhibit B to these interrogatories a true and correct copy of such report?

Answering the fourth direct interrogatory, he says:

Yes, I made such investigation of the mental condition of the said Jesse Blackburn in conformity with the said order. The other doctors who acted on the said commission with me were Dr. J. S. Tarwater, Superintendent of the Alabama State Hospitals, who was at that time Acting Superintendent, and Dr. A. M. Richards, Assistant Physician. Yes, the said Drs. Tarwater and Dr. Richards and I reported our findings from such investigation to the said Judge of the Circuit Court of Colbert County, Alabama. Said report was dated January 6, 1949, and the attached

paper marked Exhibit B to the direct interrogatories, is a true and correct copy of said report.

The State objects to the report of lunacy because it is illegal, irrelevant, and incompetent, and on the further ground that the report is not under sanctity of oath. Objection overruled.

The State objects on the farther ground that it is hearsay. Objection overruled.

The State objects to the reference of the Searcy Hospital in the lunacy report—it is not shown whether it is official, or signed by anyone.

By the Court: Gentlemen, I wish you all had asked them that in the cross-interrogatories. Objection overruled.

[fol. 34] EXHIBIT "B"

STATE OF ALABAMA,
Mobile County.

To: Honorable Robert H. Hill, Judge of Circuit Court, Colbert County, Tuscumbia, Alabama.

Under the provisions of an Act of the Legislature of Alabama approved April 17, 1933, (Title 15, Section 425, Code of Alabama of 1940), one Jesse Blackburn, colored, indicted for robbery and assault with intent to murder, was admitted to the Searcy Hospital on July 29, 1948 under order of Honorable Robert H. Hill, Judge of Circuit Court, Colbert County, Alabama, Tuscumbia, Alabama, for observation and report as provided in the Act referred to above.

In compliance with the provisions of the Act, the Superintendent of the hospital appointed Doctor H. S. Rowe, Assistant Superintendent and Doctor A. M. Richards, Assistant Physician, who associated with the Superintendent constitute the undersigned commission. After having the said Jesse Blackburn under our study and observation continually since the above date of admission we desire to submit the following report:

It is the opinion of each of us, and our opinion jointly and collectively, that the said Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948

was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged.

Under the provisions of the fact referred to above, we understand that with the rendering of this report our obligation and that of the Searcy Hospital, one of the Alabama State Hospitals, has been discharged and that if it is the wish of the court that the said, Jesse Blackburn be detained longer in this institution as a patient, it would be necessary for this court or some court of jurisdiction to issue a commitment or order for the further detention of the said, Jesse Blackburn in the Searcy Hospital.

Awaiting your further order or that of the Court or the Sheriff of Colbert County.

Respectfully submitted,

Signed and executed this 6th day of January 1949 at the Searcy Hospital, Mt. Vernon, Alabama.

(S.) J. S. Harwater, M. D., Acting Superintendent, (S.) Harry S. Rowe, M. D., Assistant Superintendent, (S.) A. M. Richards, M. D., Assistant Physician.

[fol. 35] Fifth Interrogatory

Did you and the other doctors associated with you find as stated in said report: "From a study of his case and using information from several other mental hospitals where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged."? Did this part of your report relate to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of your said report?

Answering the fifth direct interrogatory, the witness says:

In that report we (the three doctors mentioned in and who signed said report) stated in that report, "from a study of his case and using information from several other mental hospitals where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged." Yes, that part of our report related to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of the making of our said report.

Sixth Interrogatory

Subsequent to your report of January 6, 1949, was there an order made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind? If so, please state whether or not the attached paper marked Exhibit C is a true and correct copy of said commitment order dated December 27, 1949. Please state whether or not Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29, 1948, and whether his commitment continued to October 7, 1952.

Answering the sixth direct interrogatory, the witness says:

Yes, subsequently to our report of January 6, 1949, such an order was made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind. Yes, the paper marked Exhibit C and attached to the interrogatories, is a true and correct copy of said commitment order dated December 27, 1949. Yes, the said Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29, 1949, and his commitment continued to [fol. 36] October 7, 1952.

EXHIBIT "C"

STATE OF ALABAMA

vs.

JESSE BLACHBURN

Robbery, Case No. 8522

IN THE CIRCUIT COURT

STATE OF ALABAMA,
Colbert County:

Assault with Intent to Murder Case No. 8521

Under the provisions of Title 15, Articles 1 and 2 of the 1940 Code of Alabama, the above named Jesse Blackburn, was on July 29, 1948 ordered to be examined and observed by a Lunacy Commission to determine whether or not he was sane or insane at the time of the alleged commission of the crimes charged and at the time of said commitment; report has now been made to the Court by a Commission of three, to-wit: Dr. J. S. Farwater, Acting Superintendent; Dr. Harry S. Rowe, Assistant Superintendent, and A. M. Richards, Assistant Physician, all officials connected with the Searcy Hospital, Mount Vernon, Alabama, in which report it is certified that at the time of his admission to the Searcy Hospital on July 29, 1948, the said prisoner was insane and incompetent and that such mental condition has continued; it also appears to the Court that said prisoner has been declared insane by the Circuit Court of Mobile County, Alabama, on an alleged offense committed in that jurisdiction and the Circuit Court Judge of that jurisdiction ordered the said prisoner returned back to the Searcy Hospital from which Institution he had at that time escaped and while on escape is alleged to have committed another offense.

Now, therefore, it is ordered, adjudged, and decreed that said prisoner be and he is hereby permanently committed to the Alabama State Hospitals at the Mount Vernon Branch thereof, where he must remain until restored to his right mind, and if and when he is restored to his right

mind, the Superintendent of said Hospital is requested and directed to inform the Colbert County, Alabama Circuit Court Judge and the Sheriff and in such event said prisoner will then be remanded back to the Colbert County Jail and criminal proceedings be thereupon resumed against him or other and different orders may be entered, disposing of his cases.

Dated at Tuscumbia, Alabama, this 27 day of December, 1949.

(S.) Robert M. Hill, Circuit Judge.

[fol. 37] CC: Hon. W. L. Almon, Solicitor of the 11th Judicial Circuit, Florence, Alabama.

Mrs. W. Lee Stanley, Clerk, Circuit Court, Tuscumbia, Alabama.

Seventh Interrogatory

Please state all the pertinent additional facts and further information and opinions relating to the mental condition of Jesse Blackburn during the month of April, 1948, and during the period from January 1, 1948, to July 29, 1948.

Answering the seventh direct interrogatory, he says:

Jesse Blackburn was committed to the hospital here on July 29, 1948 from Colbert County, Alabama, as a criminal patient, and the permanent commitment was dated the 27th day of December, 1949, and it was signed by the Circuit Judge, Hon. Robert M. Hill. Jesse Blackburn was held under that commitment from that date until November 12, 1952, at which time he was discharged from the hospital and was dismissed and given into the custody of the officers from Colbert County, Alabama. The Commission kept Jesse Blackburn under observation continually from July 29th 1948, and he was observed during psycopathic episodes, and the commission, having had a history of his having been hospitalized previously, the Commission was of the opinion—all of us, individually and collectively—that he was most probably mentally incompetent and insane at the time of the commission of the crime for which he was charged. While in the hospital he would show an abnormal behavior at times, and at other times he would be apparently normal. And for several months prior to the time he

was released from this institution into the custody of other Colbert County officials, he had been cooperative, talked and acted fairly rationally, and his behavior was what would be considered practically normal, and the Court was notified that he could be released, and at that time it was our opinion that he was mentally competent. After getting in all of the laboratory reports and having him under observation for a long period of time, and noting his behavior and at times his peculiarities in general, it was clear that he was suffering from schizophrenia of the paranoic type. They undergo personality changes and they do exhibit peculiarities, and they entertain delusions and also exhibit *hallanuciations—kalluniatory* ideas. These people who are suffering from this condition, are at times rather treacherous, or they are sometimes subject to remissions from the symptoms. It is my opinion that Jesse Blackburn was insane [fol. 38] at the time of the commission of the crime for which he was charged, and that at that time he was most probably not capable of distinguishing right from wrong, because of his mental illness.

(The following appeared at the bottom of the Direct Interrogatories):

(S.) Mitchell & Poellnitz, Attorneys for Defendant.

The name of John R. Higgins, of Mobile, Alabama, is suggested as a fit and suitable person to take down the answers to the foregoing interrogatories and it is requested that a commission issue to him for that purpose.

(S.) C. A. Poellnitz, Atty.

A copy of the foregoing with exhibits has been personally served on M. L. Almon, Solicitor, this 6th day of April, 1953.

C. A. Poellnitz.

THE STATE PRODUCES THE CROSS-INTERROGATORIES TO DR. HARRY S. ROWE

Now comes the Plaintiff and propounds cross-interrogatories to the defendant's witness, Dr. Harry S. Rowe:

Interrogatory No. I

Dr., please state over what period of time you personally observed Jesse Blackburn.

Answering the first cross-interrogatory, the witness says:

Jesse Blackburn was committed to the Searcy Hospital on July 29th 1948, where he remained until the time of his discharge, except for the period of namely January 24th 1949, when he *sloped* and returned April 23rd 1949. I had him under observation continually until the time of his discharge, on November 12th 1952.

Interrogatory No. II

Give the time from the beginning of your observation of Jesse Blackburn and the date he was last seen and observed by you.

Answering the second cross-interrogatory, he says:

He was committed to the hospital. He was released from the hospital to the Colbert County authorities November 12th 1952. During that time he was away from the hospital from January 24th 1949, to April 23rd 1949, he having escaped on the first date mentioned and having returned [fol. 39] on the last mentioned date.

Interrogatory No. III

How often did you see Jesse Blackburn and observe him.

Answering the third cross-interrogatory, he says:

I would say probably twice a week on general ward round, but he was observed daily by one of the hospital staff members.

Interrogatory No. IV

How long or how many hours did you see and observe Jesse Blackburn each day you saw him.

Answering the fifth cross-interrogatory, he says:

On many occasions I interviewed him for quite some time, and at other times it was merely seeing him as I passed him on the general ward rounds.

Interrogatory No. V

How long and over what period of time did he exhibit abnormal thinking and abnormal behavior?

Answering the fifth cross-interrogatory, he says:

At intervals during his entire stay in the hospital here he would exhibit abnormal thinking and abnormal behavior; but at other times he would talk and act rationally and seem perfectly normal.

Interrogatory No. VI

Is it not a fact that at times Jesse Blackburn's thinking was normal?

Answering the sixth cross-interrogatory, he says:

Yes, it is a fact.

Interrogatory No. VII

Is it not a fact that at times Jesse Blackburn's behavior was normal?

Answering the seventh cross-interrogatory, he says:

It is a fact.

Interrogatory No. VIII

Is it not a fact that Jesse Blackburn's thinking and also his behavior was more normal than abnormal?

Answering the eighth cross-interrogatory, he says:

Yes, it is a fact that his thinking and also his behavior was more normal than abnormal.

Interrogatory No. IX

Is it not a fact that at times Jesse Blackburn was rational [fol. 40] in his thinking?

Answering the ninth cross-interrogatory, he says:

Yes, it is a fact.

Interrogatory No. X

Is it not a fact that at times Jesse Blackburn was rational in his behavior?

Answering the tenth cross-interrogatory, he says:

Yes, it is a fact.

Interrogatory No. XI

Is it not a fact, Dr. Rowe, from your observation of Jesse Blackburn that he, at times, had lucid intervals?

Answering the eleventh cross-interrogatory, he says:

Yes, is is a fact.

Interrogatory No. XII

Is it not a fact that your report in writing dated January 6th, 1949, to Honorable Robert M. Hill, Judge of the Circuit Court, Tuscumbia, Alabama, is based partly upon your observation of Jesse Blackburn, and also partly upon information from several other mental hospitals where he was treated?

Answering the twelfth cross-interrogatory, he says:

That is true.

Interrogatory No. XIII

When did you first see Jesse Blackburn?

Answering the thirteenth cross-interrogatory, he says:

I probably first saw him in his commitment—shortly after his commitment on July 29th 1948, but I did not actually interview him for the record until the first part of August, 1948.

Interrogatory No. XIV

What was his mental condition on April 19, 1948?

Answering the fourteenth cross-interrogatory, he says:

In our report to the Judge of the Circuit Court of Colbert County, Alabama, I did, with the other members of the lunacy commission, give the opinion that Jesse Blackburn was insane on April 19th 1948, because of the fact that we did observe him in the hospital here, and we had his

history of his having been in other hospitals and his being disgfiosed as being insane. That is still my opinion today.

Interrogatory No. XV

What was his mental condition on May the 8th, 1948?

[fol. 41] Answering the fifteenth cross-interrogatory, he says:

My opinion is that he was most probably insane and incompetent at that time. There was also a statement in the original commitment that the Judge of the Circuit Court of Colbert County, had a statement from the Sheriff and the jailor and three reputable physicians and other credible witnesses that there was reasonable ground to believe that Jesse Blackburn was insane at and about that time.

Interrogatory No. XVI

Is it not a fact that at times Jesse Blackburn suffered from psychotic episodes?

Answering the sixteenth cross-interrogatory, he says:

That is a fact.

Interrogatory No. XVII

Over what period of time did these psychotic episodes last—how many hours?

Answering the seventeenth cross-interrogatory, he says:

On several occasions he showed this *psychchotic* behavior over a period of several days or even several weeks; and at other times he would show peculiarities and abnormal behaviors without any provocation and just on the spur of the moment.

Interrogatory No. XVIII

State in ordinary lay language what a psychotic episode is.

Answering the eighteenth cross-interrogatory, he says:

A psychotic episode is where they would exhibit abnormal behavior, or abnormal thinking, and complain of imaginary wrongs that were done to them, and of seeing and hearing imaginary things, and making unusual complaints about non-existing things.

Interrogatory No. XIX

When did Jesse Blackburn enter the Searcy Hospital at Mount Vernon, Alabama?

Answering the nineteenth cross-interrogatory, he says:

He was admitted to the Searcy Hospital on July 29th 1948.

Interrogatory No. XX

When was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

Answering the twentieth cross-interrogatory, he says:

He was discharged from the hospital November 12th, 1952.

[fol. 42] Interrogatory No. XXI

Upon what condition was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

Answering the twenty-first cross-interrogatory, he says:

He was discharged from the Hospital when dismissed and given into the custody of the sheriff of Colbert County, Alabama, to be carried back to Colbert County for trial.

Interrogatory No. XXII

Referring to your letter of April 27th, 1952, to Judge Robert M. Hill, Judge of the 11th Judicial Circuit, a copy of which was addressed to the undersigned Solicitor of the 11th Judicial Circuit at Florence, Alabama, is it not a fact that for some time prior to August 27th, 1952, that Jesse Blackburn gave no special trouble and did not suffer psychotic episodes?

Answering the twenty-second cross-interrogatory, he says:

That is true.

Interrogatory No. XXIII

Is it not a fact that Jesse Blackburn was sane on April 27th, 1952?

Answering the twenty-third cross-interrogatory, he says:

I would say that he was mentally competent at that time.

Interrogatory No. XXIV

Is it not a fact that Jesse Blackburn is presently sane?

Answering the twenty-fourth cross-interrogatory, he says:

I have had no occasion to see him since he was discharged from this institution on November 12th 1952.

(The following appeared at the bottom of the Cross-interrogatories.)

W. L. Almon, Solicitor, 11th Judicial Circuit, Solicitor for Plaintiff.

(The following certificate was attached to the answers to the Interrogatories):

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In the Circuit Court of Colbert County, Alabama

Cases numbered 8521 and 8522

State of Alabama

vs.

Jesse Blackburn, Defendant

Certificate

I, John R. Higgins, as commissioner under a commission issued to me on April 15th 1953, by Mrs. W. Lee Stanley, the Clerk of the Circuit Court of Colbert County, Alabama [fol. 43] in the above entitled causes, do hereby certify that acting under the said commission, I did cause the witness, Dr. Harry S. Rowe, to come before me at Searcy Hospital (an Alabama State Hospital) at Mt. Vernon, Mobile County, Alabama, on April 16th, 1953, at 11:30 o'clock, AM; that said witness was duly sworn by me and was examined on the direct and cross-interrogatories propounded in writing to the said witness; that said testimony was taken in shorthand by Rit M. Smith, as stenographer appointed by me to take said testimony in shorthand; that said deposition was, on oath, taken as well for the State as for the Defendant, touching his knowledge of the

matters and things in controversy in said causes; and that the said stenographer thereupon transcribed his said testimony on the typewriter, and that the foregoing is a true and correct transcript of the testimony so given by the witness.

I further certify that I am neither of counsel nor of kin to either party to the causes, nor am I in any manner interested in the result thereof.

And I do herewith return this deposition with my said commission to the Clerk of the Court under my hand and seal, as witness my hand and seal this the 18th day of April, 1953.

(S.) John R. Higgins, As Commissioner (Seal).

| | |
|---|---|
| Commissioner's fee for taking said deposition | $20.00 |
| and Stenographer's fee for services | 20.00 |
| Total | $40.00 |

The defendant introduces the deposition of Dr. J. S. Tarwater, and we introduce the order appointing the Commission and the affidavit to take the deposition and the direct questions and answers.

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DEPOSITION OF DR. J. S. TARWATER.

STATE OF ALABAMA,
Colbert County, Circuit Court.

To Hon. James Mayfield, of Tuscaloosa, Alabama, Greeting:

Know ye, that we, reposing confidence in your integrity, skill, and ability, have appointed you Commissioner to take the testimony of Dr. J. S. Tarwater, a material witness for the defendant in the causes now pending in the Circuit Court of Colbert County, Alabama, brought by the State of Alabama under indictments against Jesse Blackburn, as defendant, and we hereby authorize and empower you to call and cause to come before you Dr. J. S. Tarwater, the [fol. 44] said witness and his deposition on oath to take as well for the state as for the defendant touching his

knowledge of the matters and things in controversy in said causes, which deposition, when so taken shall be signed by said witness and certified by you as Commissioner acting herein; and you are further commanded, the deposition, when so taken with this commission to return under your hand and seal to the Clerk of said court with all convenient speed.

Witness my hand this, the 15th day of April, 1953.

(S.) Mrs. W. Lee Stanley, Clerk.

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In the Circuit Court of Colbert County, Alabama

State of Alabama

vs.

Jesse Blackburn

Case No. 8521 and Case No. 8522

Affidavit to Take Deposition

Before me, Leo Berryman, Jr., a Notary Public, in and for said State and County, personally appeared Jesse Blackburn, who, being by me first duly sworn, deposes and says:

That he is the defendant in the above styled cases; that he desires to take the deposition of Dr. J. S. Tarwater who resides more than 100 miles from Tuscumbia, Alabama, the place where the above causes are set for trial, computed by the route usually travelled; and that the testimony of said witness is material for the defendant in the defense of this cause and his evidence to be secured by this deposition will be material evidence for the defendant on the trial of these causes and that said witness resides at *Bacc* Hospital, Tuscaloosa, in the County of Tuscaloosa, Alabama, and that the defense, or a material part thereof, depends exclusively on the testimony of the said witness.

This, the 6th day of April, 1953.

(S.) Jesse Blackburn, Defendant.

Sworn to and subscribed before me on this, the 6th day of April, 1953.

(S.) Leo Berryman, Jr., Notary Public, State at Large.

[fol. 45] INTERROGATORIES TO DR. J. S. TARWATER

Now comes the defendant and propounds interrogatories to Dr. J. S. Tarwater, a witness whose testimony, when taken, will be material evidence for the defendant on the trial of the above causes.

First Interrogatory

Please state your name, age, address, occupation, and official title.

1st. To the first interrogatory he saith:

My name is J. S. Tarwater. Age fifty-four. Address: Bryce Hospital, Tuscaloosa, Alabama. Occupation: Psychiatrist. Official Title: Superintendent of the Alabama State Hospitals.

Second Interrogatory

Please briefly state your qualifications as a physician and your experience and training as such. What field of medicine have you specialized in? Please briefly relate your experience and training in the field of medicine in which you have specialized. How many years have you specialized in the treatment of insane persons and mental diseases? Please state approximately how many patients you have seen suffering with mental disorders and diseases during the years of your experience in treating such cases.

2nd. To the second interrogatory he saith:

Graduate of a recognized Medical College. Number of years of specialization in nervous and mental diseases. Staff of Bryce Hospital since 1924. Superintendent of The Alabama State Hospitals, (comprising The Bryce Hospital, Tuscaloosa, Alabama, and The Searcy Hospital, Mount Vernon, Alabama), since January 1, 1950. During this period I have seen several thousand persons suffering with mental disorders and mental diseases.

Third Interrogatory

Were you in the year 1948 appointed or commissioned by or in pursuance of an order of the Circuit Court of Colbert County, Alabama, to investigate the insanity of one Jesse Blackburn, colored, under indictment for robbery and assault with intent to murder? If so, please state whether or not the attached paper marked Exhibit A to these interrogatories is a true and correct copy of the order under which you made such investigation.

3rd. To the third interrogatory he saith:

In 1948 I was appointed on a lunacy commission to investigate the sanity of one Jesse Blackburn, colored, under indictment for Robbery and Assault With Intent to Murder, and the attached paper, marked "Exhibit A" is a true [fol. 46] and correct copy of the order under which I made the investigation.

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Exhibit A

In the Circuit Court

State of Alabama

vs.

Jesse Blackburn

Cases No. 8522—Robbery, 8521—Assault With Intent to Murder

State of Alabama,
Colbert County:

Commitment to Alabama State Hospitals for Observation and Report

It appears this defendant is now incarcerated in the Colbert County jail charged as above listed and has heretofore been in the mental ward of the U. S. Government Veterans' Facilities and has in his possession two commitments to mental institutions for observation and it having been made to appear to the Judge by the testimony of the

Sheriff and Jailer that there is reasonable grounds to believe that said defendant may be insane, the undersigned Judge has instituted an investigation and called three respectable physicians and other credible witnesses and under the provisions of Section 428 of Title 15 of the 1940 Code of Alabama, and from said ex parte examination, the Court is of the opinion that there is reasonable ground to believe that the defendant was insane either at the time of the commission of such offense or at the present time.

Now, Therefore, it is hereby ordered that such defendant be delivered by the Sheriff of Colbert County, Alabama, to the Superintendent of the Alabama State Hospitals, who is charged with the duty of placing such defendant under the observation and examination of himself and two members of his medical staff to be named by him constituting a commission on lunacy with the view of determining the mental condition of such defendant and the existence of any mental disease or defect which would affect his present criminal responsibility or his criminal responsibility at the time of the commission of the crime. Said defendant shall remain in the custody of the Superintendent of the Alabama State Hospitals and subject to the observation of and examination by such commission of lunacy for such length of time as may in the judgment of the commission of lunacy be necessary to determine his mental condition so far as it affects his criminal responsibility.

As soon as such commission of lunacy has reached a conclusion within the time and in the respects as hereinabove set forth, as to the mental condition of such defendant, it [fol. 47] shall make a full written report thereof to the Clerk of the Circuit Court of Colbert County, Alabama, Tuscumbia, Alabama, said Court being the Court in which the indictment against said defendant is pending, which report shall be placed on file and be accessible to the Court, to the Solicitor, and to the Counsel appointed by the Court to represent the defendant, to-wit: Hon. Jack Carter Reed, Attorney, Tuscumbia, Alabama, and Hon. John C. Martin, Attorney, Sheffield, Alabama.

It is further ordered that said defendant remain in the safe custody and control of the Authorities of the Alabama State Hospitals, and if on the coming in of said report, it

is shown to be that the defendant is sane, then the Superintendent of said Alabama State Hospitals must inform the Judge of this Court and the Sheriff of this Court, whereupon said defendant must be remanded to the County jail of Colbert County, Alabama, and criminal proceedings be resumed against him.

It is further ordered that this order is authority to pay the Doctors appointed by the Court for their efforts expended in the examination, and the authority for the Sheriff to *the* compensated for removing said defendant to the State Hospital for the insane at Tuscaloosa, Alabama.

Copies of this order shall be placed in the offices and with the officials as listed below:

Done and ordered in open court; this the 26th day of July, 1948.

(S.) Robert M. Hill, Circuit Court Judge of Colbert County, Alabama.

Copies for:

Mr. Lee McCorkle, Sheriff, Colbert County, Alabama.
Mrs. W. Lee Stanley, Circuit Court Clerk, Tuscumbia, Alabama.
Dr. W. D. Partlow, Superintendent, Alabama State Hospitals, Tuscaloosa, Alabama.
Circuit Court file.
W. L. Almon, Solicitorof the 11th Judicial Circuit
One Copy to the Attorneys for defendant.

Fourth Interrogatory

Please state whether or not you made such investigation of the mental condition of the said Jesse Blackburn in conformity to the order identified as Exhibit A. Please also state the names of the other doctors who acted on such [fol. 48] lunacy commission with you. Did you and the other doctors you have named report your findings from such investigation to the judge of the Circuit Cofirt of Colbert County, Alabama? Was such report dated January 6, 1949, and is the attached paper marked Exhibit B to these interrogatories a true and correct copy of such report?

4th. To the fourth interrogatory he saith:

I made such investigation in conformity with the order identified as "Exhibit A". Dr. H. S. Rowe and Dr. A. M. Richards were the other two members of the commission. The report of our findings was made on January 6, 1949 to the Judges of the Circuit Court of Colbert County, Alabama, and is the attached paper, marked "Exibit B".

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EXHIBIT "B"

STATE OF ALABAMA,
Mobile County.

To: Honorable Robert M. Hill, Judge of Circuit Court, Colbert County, Tuscumbia, Alabama:

Under the provisions of an Act of the Legislature of Alabama approved April 17, 1933, (Title 15, Section 425, Code of Alabama of 1940), one Jesse Blackburn, colored, indicted for robbery and assault with intent to murder, was admitted to the Searcy Hospital on July 29, 1948 under order of Honorable Robert H. Hill, Judge of Circuit Court, Colbert County, Alabama, Tuscumbia, Alabama, for observation and report as provided in the Act referred to above.

In compliance with the provisions of the Act, the Superintendent of the Hospital appointed Doctor H. S. Rowe, Assistant Superintendent and Doctor A. M. Richards, Assistant Physician, who associated with the Superintendent constitute the undersigned commission. After having the said Jesse Blackburn under our study and observation continually since the above date of admission we desire to submit the following report:

It is the opinion of each of us, and our opinion jointly and collectively, that the said, Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948 was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane

at the time of the commission of the crime for which he is charged.

Under the provisions of the act referred to above, we understand that with the rendering of this report our obligation and that of the Searcy Hospital, one of the Alabama State Hospitals, has been discharged and that if it is the wish of the court that the said, Jesse Blackburn be detained longer in this institution as a patient, it would be necessary for this court or some court of jurisdiction to issue a commitment or order for the further detention of the said, Jesse Blackburn in the Searcy Hospital.

Awaiting your further order or that of the Court or the Sheriff of Colbert County.

Respectfully submitted,

Signed and executed this 6th day of January 1949 at the Searcy Hospital, Mt. Vernon, Alabama.

[fol. 49] (S.) J. S. Tarwater, M. D., Acting Superintendent, (S.) Harry S. Rowe, M. D., Assistant Superintendent, (S.) A. M. Richards, M. D., Assistant Physician.

Fifth Interrogatory

Did you and the other doctors associated with you find as stated in said report: "From a study of his case and using information from several other mental hospitals where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged."? Did this part of your report relate to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of your said report?

5th. To the fifth interrogatory he saith:

In the said report, I, together with the other doctors, did find the following: "From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged." This part of our report did relate to

Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of said report.

Sixth Interrogatory

Subsequent to your report of January 6, 1949, was there an order made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind? If so, please state whether or not the attached paper marked Exhibit C is a true and correct copy of said commitment order dated December 27, 1949. Please state whether or not Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29, 1948, and whether his commitment continued to October 7, 1952.

6th. To the sixth interrogatory he saith:

After our report made to the Circuit Court, the Judge of the Circuit Court sent a permanent commitment for the [fol. 50] said Jesse Blackburn to the Alabama State Hospitals at the Mount Vernon branch, and the attached paper, marked "Exhibit C" is a true and correct copy of said commitment. Jesse Blackburn was first admitted to the Alabama State Hospitals, (Searcy Hospital), on July 29, 1948, and he stayed in the hospital until November 12, 1952.

EXHIBIT "C"

IN THE CIRCUIT COURT

STATE OF ALABAMA,
Colbert County:

Robbery, Case No. 8522

Assault with Intent to Murder, Case No. 8521

STATE OF ALABAMA

vs.

JESSE BLACKBURN

Under the provisions of Title 15, Articles 1 and 2 of the 1940 Code of Alabama, the above named Jesse Blackburn, was on July 29, 1948 ordered to be examined and observed by a Lunacy Commission to determine whether or not he was sane or insane at the time of the alleged commission of the crimes charged and at the time of said commitment; report has now been made to the Court by a Commission of three, to-wit: Dr. J. S. Tarwater, Acting Superintendent, Dr. Harry S. Rowe, Assistant Superintendent, and A. M. Richards, Assistant Physician, all officials connected with the Searcy Hospital, Mount Vernon, Alabama, in which report it is certified that at the time of his admission to the Searcy Hospital on July 29, 1948, the said prisoner was insane and incompetent and that such mental condition has continued; it also appears to the Court that said prisoner has been declared insane by the Circuit Court of Mobile County, Alabama, on an alleged offense committed in that jurisdiction and the Circuit Court Judge of that jurisdiction ordered the said prisoner returned back to the Searcy Hospital from which Institution he had at that time escaped and while on escape is alleged to have committed another offense.

Now, Therefore, it is ordered, adjudged, and decreed that said prisoner be and he is hereby permanently committed to the Alabama State Hospitals at the Mount Vernon Branch thereof, where he must remain until restored to his right mind, and if and when he is restored to his right

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mind, the Superintendent of said Hospital is requested and directed to inform the Colbert County, Alabama Circuit Court Judge and the Sheriff and in such event said prisoner will then be remanded back to the Colbert County Jail and criminal proceedings be thereupon resumed against him or other and different orders may be entered, disposing of his [fol. 51] cases.

Dated at Tuscumbia, Albama, this 27 day of December, 1949.

(S.) Robert M. Hill, Circuit Judge.

CC: Hon. W. L. Almon, Solicitor of the 11th Judicial Circuit, Florence, Alabama.

Mrs. W. Lee Stanley, Clerk, Circuit Court, Auscumbia, Alabama.

Seventh Interrogatory

Please state all the pertinent additional facts and further information and opinions relating to the mental condition of Jesse Blackburn during the month of April, 1948, and during the period from January 1, 1948, to July 29, 1948.

7th. To the seventh interrogatory he saith:

The findings in the case during and immediately after hospitalization led us to believe that Jesse Blackburn was mentally ill and incompetent, and after a study of reports made about the incident for which charges were filed against him, we were of the opinion that he was mentally ill and incompetent during the month of April, 1948, and during the period from January 1, 1948 to July 29, 1948.

(The following appeared at the bottom of the Direct Interrogatories):

(S.) Mitchell & Poellnitz, Attorneys for Defendant.

The name of Aubrey Dominick or James Mayfield, of Tuscaloosa, Alabama, is suggested as a fit and suitable person to take down the answers to the foregoing interrogatories and it is requested that a commission issue to him for that purpose.

C. A. Poellnitz.

A copy of the foregoing has been personally served on W. L. Almon, this 6th of April, 1953.

C. A. Poellnitz, Atty. for Defendant.

[fol. 52] THE STATE INTRODUCES THE CROSS-INTERROGATORIES TO DR. J. S. TARWATER

Now comes the Plaintiff and propounds cross-interrogatories to the defendant's witness, Dr. J. S. Tarwater:

Interrogatory No. I

Dr., please state over what period of time you personally observed Jesse Blackburn.

1st. To the first cross-interrogatory he saith:

I saw and observed Jesse Blackburn prior to the preparation of the report to the Court and, not only interviewed him, but also discussed with the other two doctors, Dr. Rowe and Dr. Richards, and read the reports that they had made from time to time.

Interrogatory No. II

Give the time from the beginning of your observation of Jesse Blackburn and the date he was last seen and observed by you.

2nd. To the second cross-interrogatory he saith:

My observation of Jesse Blackburn occurred several weeks prior to the giving of the report to the Court that in our opinion he was mentally ill and incompetent. I am unable to give the exact date of the beginning of my observation.

Interrogatory No. III

How often did you see Jesse Blackburn and observe him?

3rd. To the third cross-interrogatory he saith:

I saw and observed Jesse Blackburn on at least four or five occasions during his stay in The Searcy Hospital.

Interrogatory No. IV

How long or how many hours did you see and observe Jesse Blackburn each day you saw him?

4th. To the fourth cross-interrogatory he saith:

It is difficult to estimate the number of hours spent in observing and interviewing Jesse Blackburn. I would judge approximately two or two and one-half hours would cover the entire time.

Interrogatory No. V

How long and over what period of time did he exhibit abnormal thinking and abnormal behavior?

5th. To the fifth cross-interrogatory he saith:

Over a period of several months after admission in Searcy Hospital.

[fol. 53] Interrogatory No. VI

Is it not a fact that at times Jesse Blackburn's thinking was normal?

6th. To the sixth cross-interrogatory he saith:

There were very few times up to the rendering of the report where Jesse Blackburn's thinking was considered normal, however, during the past year there have been occasions when he was apparently normal mentally.

Interrogatory No. VII

Is it not a fact that at times Jesse Blackburn's behavior was normal?

7th. To the seventh cross-interrogatory he saith:

The same pertains to Jesse Blackburn's behavior. For a long period of time after hospitalization his behavior was quite disturbed, and there might have been occasions when, for a day or so, his behavior was fairly normal, however, it was not continuously so. In later months his behavior has been normal.

Interrogatory No. VIII

Is it not a fact that Jesse Blackburn's thinking and also his behavior was more normal than abnormal?

8th. To the eighth cross-interrogatory he saith:

It is not true that Jesse Blackburn's thinking and behavior was more normal than abnormal for a long period of time after entering Searcy Hospital. It is true that he has been more normal during the past year.

Interrogatory No. IX

Is it not a fact that at times Jesse Blackburn was rational in his thinking?

9th. To the ninth cross-interrogatory he saith:

Jesse Blackburn was not rational in his thinking up to the time of the rendering of the report. There have been long periods of time within the past year where he was rational in his thinking and he was rational in his thinking at the time he was discharged from Searcy Hospital.

Interrogatory No. X

Is it not a fact that at times Jesse Blackburn was rational in his behavior?

10th. To the tenth cross-interrogatory he saith:

The same is true of Jesse Blackburn's behavior as mentioned in regard to his thinking, which is stated in cross-interrogatory number nine.

[fol. 54] Interrogatory No. XI

Is it not a fact, Dr. Tarwater, from your observation of Jesse Blackburn, that he, at times, had lucid intervals?

11th. To the eleventh cross-interrogatory he saith:

There were lucid intervals after a few months period of hospitalization.

Interrogatory No. XII

Is it not a fact that your report in writing dated January 6th, 1949, to Honorable Robert M. Hill, Judge of the Circuit Court, Tuscumbia, Alabama, is based partly upon your observation of Jesse Blackburn, and also partly upon information from several other mental hospitals where he was treated?

12th. To the twelfth cross-interrogatory he saith:

The report given to Hon. Robert M. Hill, Judge of Circuit Court, Tuscumbia, Alabama, January 6, 1949, is based on observation and study of Jesse Blackburn, together with all other information supplied us from relatives and from several other mental hospitals where he had been previously treated.

Interrogatory No. XIII

When did you first see Jesse Blackburn?

13th. To the thirteenth cross-interrogatory he saith:

I do not know the exact date of my first interview with Jesse Blackburn.

Interrogatory No. XIV

What was his mental condition on April 19, 1948?

14th. To the fourteenth cross-interrogatory he saith:

From study of his case, together with other information furnished, it is my opinion that on April 19, 1948, Jesse Blackburn was mentally incompetent.

Interrogatory No. XV

What was his mental condition on May the 8th, 1948?

15th. To the fifteenth cross-interrogatory he saith:

It is my opinion that, on May 8, 1948, Jesse Blaskburn was mentall ill and mentally incompetent.

Interrogatory No. XVI

Is it not a fact that at times Jesse Blackburn suffered psychotic episodes?

[fol. 55] 16th. To the sixteenth cross-interrogatory he saith:

It is true that, for a number of years, Jesse Blackburn has suffered from psychotic episodes, however, there is history to indicate that he does clear up from these psychotic episodes from time to time.

Interrogatory No. XVII

Over what period of time did these psychotic episodes last—how many hours?

17. To the seventeenth cross-interrogatory he saith:

This psychotic state lasted fairly continuously for several months, then for shorter intervals of a week or two continuously until a state of remission.

(There was not an interrogatory numbered 18.)

Interrogatory No. XIX

When did Jesse Blackburn enter the Searcy Hospital at Mount Vernon, Alabama?

19th. To the nineteenth cross-interrogatory he saith:

Jesse Blackburn entered Searcy Hospital at Mount Vernon July 29, 1948.

Interrogatory No. XX

When was Jesse Blackburn discharged from Searcy Hospital, at Mount Vernon, Alabama?

20th. To the twentieth cross-interrogatory he saith:

Jesse Blackburn was discharged from Searcy Hospital at Mount Vernon, Alabama on November 12, 1952.

Interrogatory No. XXI

Upon what condition was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

21st. To the twenty-first cross-interrogatory he saith:

Jesse Blackburn was considered mentally competent at the time of his discharge from Searcy Hospital at Mount Vernon, Alabama.

(S.) J. S. Tarwater.

(The following appeared at the bottom of the Cross-interrogatories):

W. L. Almon, Solocitor, 11th Judicial Circuit, for Plaintiff.

[fol. 56] (The following certificate was attached to the answers to the Interrogatories):

I, James Mayfield, the Commissioner in said commission named, do hereby certify that the foregoing testimony and answers, taken down and written by me in the words of the witness, Dr. J. S. Tarwater, were read over to him; that he assented, swore to and subscribed the same in our presence, at the time and place herein mentioned; and that I have personal knowledge of the personal identity of the said witness; that I am not of counsel or kin to either of the parties to said cause, nor interested in the result thereof. And I enclose the said testimony, together with the said commission and the interrogatories, direct and cross, to the said Clerk of the Circuit Court, whence the same emanated, as my full execution of said commission. Given under my hand and seal, this the 17th day of April, 1953.

(S.) James Mayfield, (L. S.), Commissioner & Notary Public, (Seal).

By Mr. Poellnitz:

The depositions of Dr. Rowe and Dr. Tarwater have been introduced by the defendant on voir dire on the admissibility of the statement sought to be introduced by the State. That is all the evidence we want to introduce on that issue at this particular time.

By the Court: The case is with the State on that particular issue.

## State's Testimony on Voir Dire

### Deposition of Dr. A. M. Richards

The State offers the affidavit of Jesse Blackburn to take the deposition of Dr. A. M. Richards, and the commission issued by the Clerk of the Circuit Court of Colbert County,

In the Circuit Court of Colbert County, Alabama

State of Alabama

vs.

Jesse Blackburn

Alabama, to take the deposition.

State of Alabama,

Case No. 8521 and Case No. 8522

Affidavit to Take Deposition

Before me, Leo Berryman, Jr., a Notary Public, in and for said State and County, personally appeared Jesse Blackburn, who, being by me first duly sworn, deposes and says:

That he is the defendant in the above styled cases; that he desires to take the deposition of Dr. A. M. Richards [fol. 57] who resides more than 100 miles from Tuscumbia, Alabama, the place where the above causes are set for trial, computed by the route usually travelled; and that the testimony of said witness is material for the defendant in the defense of this cause and his evidence to be secured by this deposition will be material evidence for the defendant on the trial of these causes and that said witness resides at Mt. Vernon in the County of Mobile, Alabama, and that the defense, or a material part thereof, depends exclusively on the testimony of the said witness.

This, the 6th day of April, 1953.

(S.) Jesse Blackburn, Defendant.

Sworn to and subscribed before me on this, the 6th day of April, 1953. (S.) Leo Berryman, Jr., Notary Public at Large.

STATE OF ALABAMA,
Colbert County, Circuit Court:

To Hon. John R. Higgins, of Mobile, Alabama, Greeting:

Know Ye, that we, reposing confidence in your integrity, skill, and ability, have appointed you Commissioner to take the testimony of Dr. A. M. Richards, a material witness for the defendant in the causes now pending in the Circuit Court of Colbert County, Alabama, brought by the State of Alabama under indictments against Jesse Blackburn, as defendant, and we hereby authorize and empower you to call and cause to come before you Dr. A. M. Richards, the said witness and his deposition on oath to take as well for the state as for the defendant touching his knowledge of the matters and things in controversy in said causes, which deposition, when so taken shall be signed by said witness and certified by you as Commissioner acting herein; and you are further commanded, the deposition, when so taken with this commission to return under your hand and seal to the Clerk of said Court with all convenient speed.

Witness my hand this, the 15 day of April, 1953.

(S.) Mrs. W. Lee Stanley, Clerk.

[fol. 58] The State offers the direct interrogatories and the cross-interrogatories and the answers thereto propounded to Dr. A. M. Richards.

DIRECT INTERROGATORIES AND ANSWERS THERETO

Interrogatories to Dr. A. M. Richards

Now comes the defendant and propounds interrogatories to Dr. A. M. Richards, a witness whose testimony, when taken, will be material evidence for the defendant on the trial of the above causes.

First Interrogatory

Please state your name, age, address, occupation, and official title.

Answering the First Direct Interrogatory, he says:

My name is A. M. Richards. My occupation is physician. My age is in the early seventies. My address is Mt. Vernon, Alabama. I am a Staff Member at the Searcy Hospital there.

Second Interrogatory

Please briefly state your qualifications as a physician and your experience and training as such. What field of medicine have you specialized in? Please briefly relate your experience and training in the field of medicine in which you have specialized. How many years have you specialized in the treatment of insane persons and mental diseases? Please state approximately how many patients you have seen suffering with mental disorders and diseases during the years of your experience in treating such cases.

Answering the Second Direct Interrogatory, he says:

I have been in the insane hospital service for twelve years. I am a graduate of the Maryland Medical College, Baltimore, Maryland. I hold an MD degree. I have been in the practice of medicine for about forty years. For the past twelve years I have been a Staff member at the Searcy Hospital, at Mt. Vernon, Alabama. I have been a staff member of different hospitals. All of them were mental hospitals. At those hospitals I specialized in mental diseases. My practice was a general practice up until twelve years ago. In that twelve years, I served in the Wichita State Mental Hospital, of Wichita, Texas, until I came here, to this hospital, at Mt. Vernon, Alabama. This is the Searcy Hospital, at Mt. Vernon, Alabama. In those twelve years I have dealt with mental cases exclusively I believe that I have specialized in the treatment of insane persons and mental diseases. I could not answer correctly how many patients I have seen suffering with mental disorders [fol. 59] and diseases during the years of my experience in treating such cases. Roughly I would say many thousands.

Third Interrogatory

Were you in the year 1948 appointed or commissioned by or in pursuance of an order of the Circuit Court of Colbert County, Alabama, to investigate the insanity of one

Jesse Blackburn, colored, under indictment for robbery and assault with intent to murder? If so, please state whether or not the attached paper marked Exhibit A to these interrogatories is a true and correct copy of the order under which you made such investigation.

Answering the Third Direct Interrogatory the witness says:

Yes, I was. Yes, the attached paper marked "Exhibit A" to the interrogatories is a true and correct copy of the order under which I made that investigation.

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EXHIBIT A

IN THE CIRCUIT COURT

STATE OF ALABAMA,
Colbert County:

STATE OF ALABAMA

vs.

JESSE BLACKWELL

Cases No. 8522—Robbery, 8521—Assault with Intent to Murder

Commitment to Alabama State Hospitals for Observation and Report

It appears this defendant is now incarcerated in the Colbert County jail charged as above listed and has heretofore been in the mental ward of the U. S. Government Veterans' Facilities and has in his possession two commitments to mental institutions for observation and it having been made to appear to the Judge by the testimony of the Sheriff and Jailer that there is reasonable grounds to believe that said defendant may be insane, the undersigned Judge has instituted an investigation and called three respectable physicians and other credible witnesses and under the provisions of Section 428 of Title 15 of the 1940 Code of Alabama, and from said ex parte examination, the Court is

of the opinion that there is reasonable ground to believe that the defendant was insane either at the time of the commission of such offense or at the present time.

Now, Therefore, it is hereby ordered that such defendant be delivered by the Sheriff of Colbert County, Alabama, to the Superintendent of the Alabama State Hospitals, who is charged with the duty of placing such defend- [fol. 60] ant under the observation and examination of himself and two members of his medical staff to be named by him constituting a commission on lunacy with the view of determining the mental condition of such defendant and the existence of any mental disease or defect which would affect his present criminal responsibility or his criminal responsibility at the time of the commission of the crime. Said defendant shall remain in the custody of the Superintendent of the Alabama State Hospital and subject to the observation of and examination by such commission of lunacy for such length of time as may in the judgment of the commission of lunacy be necessary to determine his mental condition so far as it affects his criminal responsibility.

As soon as such commission of lunacy has reached a conclusion within the time and in the respects as hereinabove set forth, as to the mental condition of such defendant, it shall make a full written report thereof to the Clerk of the Circuit Court of Colbert County, Alabama, Tuscumbia, Alabama, said Court being the Court in which the indictment against said defendant is pending, which report shall be placed on file and be accessible to the Court, to the Solicitor, and to the Counsel appointed by the Court to represent the defendant, to-wit: Hon. Jack Carter Reed, Attorney, Tuscumbia, Alabama, and Hon. John C. Martin, Attorney, Sheffield, Alabama.

It is further ordered that said defendant remain in the safe custody and control of the Authorities of the Alabama State Hospitals, and if on the coming in of said report, it is shown to be that the defendant is sane, then the Superintendent of said Alabama State Hospitals must inform the Judge of this Court and the Sheriff of this Court, whereupon said defendant must be remanded to the County jail of Colbert County, Alabama, and criminal proceedings be resumed against him.

It is further ordered that this order is authority to pay the Doctors appointed by the Court for their efforts expended in the examination, and the authority for the Sheriff to *the* compensated for removing said defendant to the State Hospital for the insane at Tuscaloosa, Alabama.

Copies of this order shall be placed in the offices and with the officials as listed below:

Done and ordered in open court, this the 26th day of July, 1948.

(S.) Robert M. Hill, Circuit Court Judge of Colbert County, Alabama.

[fol. 61] Copies for:

Mr. Lee McCorkle, Sheriff, Colbert County, Alabama.
Mrs. W. Lee Stanley, Circuit Court Clerk, Tuscumbia, Alabama.
Dr. W. D. Partlow, Superintendent, Alabama State Hospitals, Tuscaloosa, Alabama.
Circuit Court file.
W. L. Almon, Solicitor of the 11th Judicial Circuit.

One copy to the Attorneys for defendant.

Fourth Interrogatory

Please state whether or not you made such investigation of the mental condition of the said Jesse Blackburn in conformity to the order identified as Exhibit A. Please also state the names of the other doctors who acted on such lunacy commission with you. Did you and the other doctors you have named report your findings from such investigation to the judge of the Circuit Court of Colbert County, Alabama? Was such report dated January 6, 1949, and is the attached paper marked Exhibit B to these interrogatories a true and correct copy of such report?

Answering the Fourth Direct Interrogatory, the witness says:

Yes, I made such investigation of the mental condition of the said Jesse Blackburn in conformity with the said order. The other doctors who served on the said lunacy commission with me were Dr. H. S. Rowe and Dr. Tarwater. Yes,

the said Doctors Tarwater and Rowe reported to the Judge of the Circuit Court of Colbert County, Alabama, our findings from said investigation. Yes said report was dated January 6th 1949. Yes, the paper attached to the interrogatories and marked Exhibit B to said interrogatories is a true and correct copy of said report.

EXHIBIT "B"

STATE OF ALABAMA,
Mobile County.

To: Honorable Robert H. Hill, Judge of Circuit Court, Colbert County, Tuscumbia, Alabama:

Under the provisions of an Act of the Legislature of Alabama approved, April 17, 1933, (Title 15, Section 425, Code of Alabama of 1940), one Jesse Blackburn, colored, indicted for robbery and assault with intent to murder, was admitted to the Searcy Hospital on July 29, 1948 under order of Honorable Robert H. Hill, Judge of Circuit Court, Colbert County, Alabama, Tuscumbia, Alabama, for observation and report as provided in the Act referred to above. [fol. 62] In compliance with the provisions of the Act, the Superintendent of the hospital appointed Doctor H. S. Rowe, Assistant Superintendent and Doctor A. M. Richards, Assistant Physician, who associated with the Superintendent constitute the undersigned commission. After having the said Jesse Blackburn under our study and observation continually since the above date of admission we desire to submit the following report:

It is the opinion of each of us, and our opinion jointly and collectively, that the said, Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948 was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged.

Under the provisions of the act referred to above, we understand that with the rendering of this report our obligation and that of the Searcy Hospital, one of the Alabama State Hospitals, has been discharged and that if it is the wish of the court that the said, Jesse Blackburn be detained longer in this institution as a patient, it would be necessary for this court or some court of jurisdiction to issue a commitment or order for the further detention of the said, Jesse Blackburn in the Searcy Hospital.

Awaiting your further order or that of the Court or the Sheriff of Colbert County.

Respectfully submitted,

Signed and executed this 6th day of January 1949 at the Searcy Hospital, Mt. Vernon, Alabama.

(S.) J. S. Tarwater, M. D., Acting Superintendent, (S.) Harry S. Rowe, M. D., Assistant Superintendent, (S.) A. M. Richards, M. D., Assistant Physician.

Fifth Interrogatory

Did you and the other doctors associated with you find as stated in said report; "From a study of his case and using information from several other mental hospitals where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged."? Did this part of your report relate to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of your said report?

Answering the Fifth Direct Interrogatory, the witness says:

Yes the other doctors and I found as stated in said report, that from a study of his case and using information from several other mental hospitals where he has formerly been treated. It is our further opinion that he was insane at the time of the commission of the crime for which he is charged. Yes, that part of our report related to Jesse Blackburn and to the indictments of robbery and assault [fol. 63] with intent to murder which has been returned

and were pending against him in Colbert County, Alabama, at the time of our said report. Yes, I have read that report. Yes, I signed it. Yes, I and the said other doctors associated with me found as stated in the said report, and that part of said report which is set out in quotation marks, commencing with the words, "From a study of his case and using information" and ending with the words "commission of the crime for which he is charged" did relate to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of said report.

Sixth Interrogatory

Subsequent to your report of January 6, 1949, was there an order made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind? If so, please state whether or not the attached paper marked Exhibit C is a true and correct copy of said commitment order dated December 27, 1949. Please state whether or not Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29, 1948, and whether his commitment continued to October 7, 1952.

Answering the sixth direct interrogatory, the witness says:

Yes, subsequent to our report of January 6th, 1949, there was an order made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind. Yes, the report attached to the sixth direct interrogatory, is a true and correct copy of said commitment order dated December 27th 1949. Yes, said Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29th 1948, and his commitment continued to October 7th 1952.

EXHIBIT "C"

IN THE CIRCUIT COURT

STATE OF ALABAMA,
Colbert County:

Robbery, Case No. 8522, Assault with Intent to Murder, Case No. 8521

STATE OF ALABAMA

vs.

JESSE BLACKBURN

Under the provisions of Title 15, Articles 1 and 2 of the 1940 Code of Alabama, the above named Jesse Blackburn, was on July 29, 1948 ordered to be examined and [fol. 64] observed by a Lunacy Commission to determine whether or not he was sane or insane at the time of the alleged commission of the crimes charged and at the time of said commitment; report has not been made to the Court by a Commission of three, to wit: Dr. J. S. Tarwater, Acting Superintendent, Dr. Harry S. Rowe, Assistant Superintendent, and A. M. Richards, Assistant Physician, all officials connected with the Searcy Hospital, Mount Vernon, Alabama, in which report it is certified that at the time of his admission to the Searcy Hospital on July 29, 1948, the said prisoner was insane and incompetent and that such mental condition has continued; it also appears to the Court that said prisoner has been declared insane by the Circuit Court of Mobile County, Alabama, on an alleged offense committed in that jurisdiction and the Circuit Court Judge of that jurisdiction ordered the said prisoner returned back to the Searcy Hospital from which institution he had at that time escaped and while on escape is alleged to have committed another offense.

Now, therefore, it is ordered, adjudged, and decreed that said prisoner be and he is hereby permanently committed to the Alabama State Hospitals at the Mount Vernon Branch thereof, where he must remain until restored to his right mind, and if and when he is restored to his right

mind, the Superintendent of said Hospital is requested and directed to inform the Colbert County, Alabama Circuit Court Judge and the Sheriff and in such event said prisoner will then be remanded back to the Colbert County Jail and criminal proceedings be thereupon resumed against him or other and different orders may be entered, disposing of his cases.

Dated at Tuscumbia, Alabama, this 27 day of December, 1949.

(S.) Robert M. Hill, Circuit Judge.

CC: Hon. W. L. Almon, Solicitor of the 11th Judicial Circuit, Florence, Alabama.

Mrs. W. Lee Stanley, Clerk, Circuit Court, Tuscumbia, Alabama.

Seventh Interrogatory

Please state all the pertinent additional facts and further information and opinions relating to the mental condition of Jesse Blackburn during the month of April, 1948, and during the period from January 1, 1948, to July 29, 1948.

[fol. 65] Answering the Seventh Direct Interrogatory, he says:

I have none, other than the above.

(The following appeared at the end of the Direct Interrogatories):

(S.) Mitchell & Poellnitz, Attorneys for Defendant.

The name of John R. Higgins, of Mobile, Alabama, is suggested as a fit and suitable person to take down the answers to the foregoing interrogatories and it is requested that a commission issue to him for that purpose.

(S.) C. A. Poellnitz.

A copy of the foregoing has been personally served on W. L. Almon, Solicitor on this 6th April 1953.

(S.) C. A. Poellnitz, Atty. for Defendant.

CROSS-INTERROGATORIES TO DR. A. M. RICHARDS

Now comes the Plaintiff and propounds cross-interrogatories to the defendant's witness, Dr. A. M. Richards:

Interrogatory No. I

Dr., please state over what period of time you personally observed Jesse Blackburn.

Answering the First Cross-Interrogatory, the witness says:

From the time he came in until he left this hospital.

Interrogatory No. II

Give the time from the beginning of your observation of Jesse Blackburn and the date he was last seen and observed by you.

Answering the second cross-interrogatory, he says:

About three and a half years.

Interrogatory No. III

How often did you see Jesse Blackburn and observe him?

Answering the third cross-interrogatory, he says:

He was up on the criminal ward and he was such a nuisance until I didn't see him often. Dr. Head had looked after him mainly.

Interrogatory No. IV

How long or how many hours did you see and observe Jesse Blackburn each day you saw him?

[fol. 66] Answering the fourth cross-interrogatory, he says:

Well, that is impossible to answer just how long. Ten or fifteen minutes at a time.

Interrogatory No. V

How long and over what period of time did he exhibit abnormal thinking and abnormal behavior?

Answering the fifth cross-interrogatory he says:

None.

Interrogatory No. VI

Is it not a fact that at times Jesse Blackburn's thinking was normal?

Answering the sixth cross-interrogatory, he says:

He had been normal ever since I first saw him, mentally.

Interrogatory No. VII

Is it not a fact that at times Jesse Blackburn's behavior was normal?

Answering the seventh cross-interrogatory, he says:

Yes, at times his behavior was normal.

Interrogatory No. VIII

Is it not a fact that Jesse Blackburn's thinking and also his behavior was more normal than abnormal?

Answering the eighth cross-interrogatory, he says:

Yes, it was more normal than abnormal.

Interrogatory No. IX

Is it not a fact that at times Jesse Blackburn was rational in his thinking?

Answering the ninth cross-interrogatory, he says:

Certainly.

Interrogatory No. X

Is it not a fact that at times Jesse Blackburn was rational in his behavior?

Answering the tenth cross-interrogatory, he says:

Yes.

Interrogatory No. XI

Is it not a fact, Dr. Richards, from your observation of Jesse Blackburn, that he, at times, had lucid intervals?

Answering the eleventh cross-interrogatory, he says:

I do not think so.

[fol. 67] Interrogatory No. XII

Is it not a fact that your report in writing dated January 6th, 1949, to Honorable Robert M. Hill, Judge of the Circuit Court, Tuscumbia, Alabama, is based partly upon your observation of Jesse Blackburn, and also partly upon information from several other mental hospitals where he was treated?

Answering the twelfth cross-interrogatory, he says:

Yes.

Interrogatory No. XIII

When did you first see Jesse Blackburn?

Answering the thirteenth cross-interrogatory, he says:

The date he came in here.

Interrogatory No. XIV

What was his mental condition on April 19, 1948

Answering the fourteenth cross-interrogatory, he says:

Normal.

Interrogatory No. XV

What was his mental condition on May the 8th, 1948?

Answering the fifteenth cross-interrogatory, he says:

Good.

Interrogatory No. XVI

Is it not a fact that at times Jesse Blakburn suffered psychotic episodes?

Answering the sixteenth cross-interrogatory, he says:

Not at any time I saw him.

Interrogatory No. XVII

Over what period of time did these psychotic episodes last—how many hours?

Answering the seventeenth cross-interrogatory, he says:

None.

Interrogatory No. XVIII

State in ordinary lay language what a psychotic episode is.

Answering the eighteenth cross-interrogatory, he says:

I could not answer that.

Interrogatory No. XIX

When did Jesse Blackburn enter the Searcy Hospital at Mount Vernon, Alabama?

[fol. 68] Answering the ninteenth cross-interrogatory, he says:

About 1948, I believe.

Interrogatory No. XX

When was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

Answering the twentieth cross-interrogatory, he says:

November 12th 1952.

Interrogatory No. XXI

Upon what condition was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

Answering the twenty-first cross-interrogatory, he says:

Because we thought he needed to go back for trial.

(The following appeared at the end of the cross-interrogatories):

W. L. Almon, Solicitor, of the 11th Judicial Circuit, Sol. for Plaintiff.

(The following certificate appeared at the end of the answers to the interrogatories):

IN THE CIRCUIT COURT OF COLBERT COUNTY, ALABAMA

Cases numbered 8521 and 8522

STATE OF ALABAMA,

vs.

JESSE BLACKBURN, Defendant

Certificate

I, John R. Higgins, as commissioner under a commission issued to me on April 15th 1953, by Mrs. W. Lee Stanley, the Clerk of the Circuit Court of Colbert County, Alabama in the above entitled causes, do hereby certify that acting under the said commission, I did cause the witness Dr. A. M. Richards, to come before me at Searcy Hospital (an Alabama State Hospital) at Mt. Vernon, Mobile County, Alabama, on April 16th 1953 at 10:45 o'clock AM; that said witness was duly sworn by me and was examined on the direct and cross-interrogatories propounded in writing to the said witness; that said testimony was taken in shorthand by Rit M. Smith, as stenographer appointed by me to take said testimony in shorthand; that the said deposition was, on oath, taken as well for the State as for the Defendant, touching his knowledge of the matters and things in controversy in said causes, and that the said stenographer thereupon transcribed his said testimony on [fol. 69] the typewriter, and that the foregoing is a true and correct transcript of the testimony so given by the witness.

I further certify that I am neither of counsel nor of kin to either party to the causes, nor am I in any manner interested in the result thereof.

And I do herewith return this deposition with my said commission to the Clerk of the Court under my hand and seal, as witness my hand and seal this the 18th day of April, 1953.

(S.) John R. Higgins, As Commissioner (Seal).

| | |
|---|---|
| Commissioner's fee for taking said deposition | $20.00 |
| and Stenographer's fee for services | 20.00 |
| Total | $40.00 |

W. G. STANFORD, a witness for the State on voir dire, having been first duly sworn, testified as follows:

Direct examination.

By Mr. William E. Hollingsworth:

Q. Mr. Stanford, I believe you testified that on May 8, 1948, you had occasion to talk to the defendant in this case down at the jail?

A. Yes, sir.

Defendant objects, and moves to exclude that—both counsel for the State are attempting to examine the witness, Mr. Almon started with him, and we also object to the qualification of the witness to testify on the subject which he is called on to testify.

By the Court: We will rule that he is called back to the stand in the relative position as a new witness, and we will let Mr. Hollingsworth examine him. Defendant excepts.

Q. Approximately how long were you with the defendant on that occasion—how many hours?

A. I don't remember, but something like, maybe five or six hours.

Q. I believe you testified on direct examination on the trial that you went down there right after dinner?

A. I think it was Saturday evening, right after dinner.

Q. Did you stay until supper time?

A. Yes, sir.

Q. And then did you go eat?

A. Yes, sir.

[fol. 70] Q. Did you return to the jail after you ate?

A. Yes, sir.

Q. Did you talk to him more?

A. Yes, sir.

Q. Did you ask him questions when you were there?

A. Yes, sir.

Q. Did he give answers to the questions you asked?

A. Yes, sir.

Q. Did you observe his demeanor in answering the questions?

A. Yes, sir.

Q. I will ask you whether or not at the time you wrote these questions down?

A. No, not to start with, I didn't; I asked the questions orally and then I wrote a statement from the questions and answers.

Q. Who was present?

A. Sheriff was part of the time and Bo Riner part of the time. I think the biggest part of the time Jesse and myself were alone.

Q. Now, at that time and place did you or anyone in your presence or hearing threaten the defendant, or offer him any reward or any remuneration to get a statement?

A. No, sir.

Q. And did he make a statement?

A. Yes, sir.

The State offers at this time, not to show the truth of the matter but we want to get the statement in evidence to show the clarity of it, whether it makes sense—so to speak—and we think the statement itself is something to be considered as to whether or not he was rational.

The defendant objects because you can't decide the voluntariness of it on the statement itself.

By the Court:

Q. Mr. Stanford, at the time you were talking to the defendant, did he, to your mind, speak in a rational manner or an irrational manner?

Defendant objects because the witness is not shown to be qualified to testify to the man's mental condition, and the question calls for a conclusion, and it is illegal, irrelevant, incompetent, and doesn't prove or disprove the voluntary nature of the statement. Objection overruled. Defendant excepts.

A. He talked sane to me.

[fol. 71] Defendant moves to exclude the answer because it is not responsive. Motion sustained.

By the Court: What I am trying to get at—I withdraw the other question. Did he have any difficulty in answering any of the questions, did he hesitate for long moments, or did he make ready answers?

Defendant objects because the witness is not shown to be qualified to testify to the man's mental condition, and the question calls for a conclusion, and it is illegal, irrelevant, incompetent, and doesn't prove or disprove the voluntary

nature of the statement. Objection overruled. Defendant excepts.

A. Could I answer it like this—I have took a number of statements from a number of people——

Q. No, you can't answer it by comparison.

A. Well, he answered like any normal person I have examined.

Defendant moves to exclude the answer because the witness is not shown to be qualified to testify to the man's mental condition, and that is his conclusion, and is illegal, irrelevant, and incompetent, and doesn't prove or disprove the voluntary nature of the statement. Motion overruled. Defendant excepts.

Q. Did you start out by asking his name?

A. Yes, sir.

Q. Did he tell you?

A. He did.

Q. Did you ask him where he lived?

A. I asked him where he lived and his address and what he done.

Q. Did he tell you where he lived and what his address was?

A. Yes, sir.

Q. Did he tell you his work in the past?

A. Yes, I asked his occupation and he told me.

Q. Do you remember what he said?

A. He said he was a cook in a cafe some and was a mechanic in a garage.

Q. Did you ask him how long he had been in this locality?

A. I asked him when he came here, yes.

Q. What did he say?

A. Well, he told me when he left Chicago.

Q. In what manner did you take this statement from him—Did you ask questions of him and later reduce it in your own handwriting?

[fol. 72] A. That's right, I asked questions and got his answers and later reduced it to the statement in my handwriting.

Q. Did you later read the statement to him?

A. Yes, sir.

Q. Describe the manner in which you read it to him?

A. I read it to him in the presence of the Sheriff and

James H. Riner and *and* Mrs. Sally Mae Craig; she is the Notary Public that notarized it.

Q. Did he stop you any when you were reading it?

A. I told him if there was anything in it that wasn't right, we would straighten it out, and then I read it without any interruption.

Q. Did you read it slow or rapid?

A. I read it slow and distinct where he could understand.

The defendant moves to exclude the last statement—motion sustained.

Q. Did you ask him to sign it?

A. Yes, sir.

Q. Did you give him a pencil or a pen?

A. As I remember I gave him my pen or a pencil.

Q. Did you or not indicate to him where to sign?

A. I showed him what line to sign it on.

Q. Did he sign his name?

A. Yes, he did.

Q. What witnesses were present?

A. The Sheriff, Mr. McCorkle; and James H. Riner, they signed it as witnesses.

Q. On that particular day was there anything about his appearance such as being glass-eyed or anything to indicate to you that he was a sick man?

A. No, sir.

Q. Did he sit up in his clair or slouch over—describe his manners?

A. Well, he was sitting there in a chair like I am sitting here.

Q. About how long did it take to get the statement and get his signature to it?

A. Well, we started about, I think, soon after dinner on a Saturday evening, then we was out about an hour and he went back up and eat supper, and I eat and come back and talked to him, questioning him.

Q. Did you or anyone present make any threats or say anything to this man as to what might occur to him if he didn't continue to make the statement to you or sign the statement later?

A. No, sir.

[fol. 73] *A. No, sir.*

Q. Did he at any time make objection to the proceedings?

A. He did not.

By Mr. Hollingsworth: I would like to lay a predicate for the signature on the statement.

By the Court: All right.

Defendant moves to exclude the questions propounded by the Court and the answers in response by the witness to the Court's questions on the grounds that it is illegal, irrelevant, immaterial and prejudicial to the defendant in the trial of this cause, and is incompetent in relation to the voluntary nature of the statement in question. Motion overruled. Defendant excepts.

By Mr. Hollingsworth:

Q. Mr. Stanford, this statement you testified the defendant in this case made to you—I will ask when he signed it?

A. I believe it was on Monday morning.

Q. Do you remember who was present at the time he signed it?

A. The ones that signed it there as witnesses.

Q. The Sheriff, Mr. McCorkle?

A. Yes, sir.

Q. And James H. Riner?

A. Yes, sir.

Q. Where was this signed, what place?

A. On the desk at the jail.

Q. I believe you testified that it was on Monday morning?

A. As I remember it was after the office opened Monday morning.

Q. You testified you did read the statement to the defendant?

A. I did.

Q. What you read to him, was it a true and correct copy of what he told you?

Defendant objects because it is illegal, irrelevant, incompetent and his conclusion.

Question withdrawn.

Q. The instrument he signed on that occasion, was that what he had told you and you had put in writing on Saturday afternoon?

A. That's right.

[fol. 74] Q. At that time and place did you or anyone threaten the defendant, offer him any promises or offer

him any remuneration or any reward whatever or inducement whatsoever to get him to sign this statement?

A. No, sir.

Defendant objects on the grounds that it is repetition—it is shown by the witness' testimony that he questioned him over a period of a number of hours which speaks for itself.

By the Court: Objection sustained on the first ground, I think you asked him that a minute ago.

By Mr. Hollingsworth: I asked that about making the statement. Now, I am asking at a different time and place if he threatened and so on to get him to sign the statement.

Defendant objects on the same grounds.

Objection overruled. Defendant excepts.

A. No, sir.

By Mr. Hollingsworth: For the purpose of the hearing I would like to get this marked State's Exhibit "A" for identification purposes.

(The Statement is marked State's Exhibit "A" by the Court Reporter.)

Q. Now, I show you State's Exhibit "A" and ask you whether or not that is the statement that you took from the defendant in the case on Saturday, May 8, 1948, down at the jail that you testified to?

Defendant objects because it is not shown to be voluntary and the proper predicate is not laid. Objection overruled. Defendant excepts.

A. That is the statement that Jesse made to me.

Q. I will ask you if at this time it is in substantially the same condition that it was when he signed it, which was Monday, May 8, 1948?

Defendant objects because it is not shown to be voluntary and the proper predicate is not laid. Objection overruled. Defendant excepts.

A. That's the same statement, in the same condition, exactly like it was.

Q. I will ask you where that statement has been if you know since May 8, 1948?

A. It has been in the steel filing cabinet locked up in the Sheriff's office.

Q. Do you have custody of the cabinet?

A. I don't have a key to the cabinet; the Sheriff and Mrs. Craig are the only ones that have a key to it.

Q. Did you get it out of the safe?

A. No, sir.

Q. Who did?

[fol. 75] A. Mrs. Craig.

Q. She gave it to you?

A. Yes, sir.

Q. You state that is the same statement?

A. Yes, sir.

Defendant moves to exclude the questions and answers identifying the statement because he hasn't had custody of it.

By the Court:

Q. Is it in the same condition that it was when you took it and he signed it?

A. That's the same statement.

Q. Are there any changes in it?

A. No, sir.

Q. Are there any interlineations in it?

A. There is nothing added or taken from it.

Objection overruled. Defendant excepts.

The State offers it as State's Exhibit "A" only for the purpose of this hearing, and we want it understood that we are not offering it as to the truth of the statement but as to clarity.

By Mr. Poellnitz: We would like the opportunity to read the statement so we could have information for our objections.

(The defense attorneys read the statement.)

The defendant objects to the introduction of the purported statement marked Exhibit "A" by the State on the grounds that by the testimony of Mr. Stanford, the witness through whom it is introduced, the statement was taken over a period of hours; it could not [illegible] the continuity of thought on the part of the witness, or [illegible] not determine in any way his mental capacity to make [illegible] statement; it is otherwise shown to be involuntary; the corpus delicti has not been proven, and the statement is incompetent and illegal, and by the express statement of Mr. Stanford the

statement was put down in his words and not the defendant and could not be considered as to clarity by the defendant.

By the Court: The Court overrules the objection with the statement that the confession is being received now only for inspection by the Court on the question of whether or not the statement should be admitted in evidence in this case for later exhibition before the jury.

The defendant excepts.

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[fol. 76] STATE'S EXHIBIT "A"

May 8, 1948.

My name is Jessie Blackburn (Col.) Age 24—904 South Walcott Av., Chicago, Ill.

I willingly make the following statement to W. G. Stanford, Chief Deputy Sheriff of Colbert Co., Ala.

In the presence of Lee McCorkle, Sheriff of Colbert Co., Ala., and J. H. Riner, Deputy Sheriff of Colbert Co., Ala. I make it without fear or threat or promise or reward, and realize it can be used against me in a Co-rt of law.

On Sunday AM April 4—about 1:30 AM Dennis Thorn- was in resta-rant located at 5016 Cottage Grove Ave., Chicago, Ill. eating a Sandwich.

I was Employed at this cafe.

My Brother in law Sandy Buford who own- and operates a garage in same building known as Parkway Garage come in Cafe and told me my Brother had been killed in Pittsburg-, Penn.

After talking to my mother who lives at 451 East 50 St., she requested I go to Decatur to make funeral arrangements. Dennis Thorne was with me during this conversation. Dennis said, you remember Robert Hal, He will be glad to carry you down south to the funeral, so he can meet his payment on the 18 of April on car

(S.) Jesse Blackburn.

2.

which was due on this date. I know the car as a 1947 Buick, 2 door, maroone, Ill. license Tag ——.

Robert Hal and his wife and Dennis Thorne came to my house about 4:00, April 4, 1948. His wife, Cherry, said if

I would pay $125.00 Robert could take me South. I told them I could not pay that much but would agree to pay Robert $50.00 and all expenses.

I gave Cherry Hal $10.00 we left and had car serviced at 35 St. and South Parkway, amount at the Gulf Service Station $23.00. I paid the bill. We carried Cherry home. Robert, Dennis and myself left Chicago about 9:00 AM Sunday, 4th of April for Decatur, Ala.

We arrived in Decatur about 2:00 AM, April 5, 1948.

I got a room at (Papa Rocks) Hotel on April 5, 1948. about 1:00 PM. He stated I could have the whole 2nd floor. We, Robert Hal, Dennis Thorne, and any of my [fol. 77] friends could spend the rest of our time at Papa Rocks while in Decatur.

We went to Jack Thorns house near Al-sboro on April 7. Spent night back to Decatur on April 8, 1948. We stayed there until my Brother was buried on April 11, 1948.

(S.). Jesse Blackburn.

3.

After the Funeral we went to my Uncle Luther Moores house near Huntsville, Ala., where we spent the night.

On Monday, April 12 after leaving Uncle Luthers we, Robert Hal, Dennis Thorne and me drove to Jack Thorns house, got there about 1:00 PM.

We spent the night at Jacks house. On Tuesday AM, April 13, about 8:00 or 9:00 a Rooling Store passed going toward Al-sboro, Dorthy Thorn- stop-ed truck and bought some groceries.

Robert Hal was sitting on one of Jack Thorne's mules near truck when change was made for a $20.00 bill. When the rooling store left Robert and Dennis told me this is a good way for us to get back to Chicago. Dennis made the statement, he carries a lot of money, Robert said, you aint lying cause I saw it with my own eyes.

April 14, 1948 I ask Fannie Rodgers mother if I could marry her. She first refused, but on April 16, we did marry in Iuka, Miss.

Fannie and me on this date spent the night at Fuquas home. Next day April 17, 48, Robt. and Dennis come back to Fuquas for Dinner and to pick me and Fannie up.

(S.) Jesse Blackburn.

4.

We went from there to Jacks where we left Fannie (my wife) we told them we were leaving for Chicago this was about 5:00 PM Sat. April 17.

On Sunday April 18 about 4:00 PM or 5:00 PM Dennis brought Bernice Moore and Dorthy Garth and a boy whome I did not know to Papa Rocks Hotel. Where we all spent the night. We left Papa Rocks about 7:00-8:30 AM on Monday, April 19, 1948.

I did not know where they had started but Bernice sug-ested we go to her Aunts house in Cortland. We got there about 8:45 or 9:00. We drove out Moulton road where I saw a frier on side roade. I got out and caught the chicken. We went from there to Coartland where we bought some ir-sh potatoes. We went from there back to Louise Williams, where Bernice and Dorthy cooked. (Breakfast & Dinner) all same meal.

While Barnice an Dorethy was cooking the meal, we Robert, Dennis and me was out in the yard. Robert said we [fol. 78] aint got no money and this is a good time for us to go back and rob the Rolling Store. Dennis said this is a good idea cause he did not run Sat. or Sunday so he should have a good rool on him

(S.) Jesse Blackburn.

5.

tonight. After the meal was fixed we all ate.

Left around 12 or 1:00 PM going west. I did not have any money and if the others had any money I did not know about it. I don't think anybody in the crowd had any money cause Robert said we would pawn the spare tire at the next filling station for some Gas. Not being able to pawn the tire at this station, I saw a col. man coming up the Highway, who arranged for us to get 3 gal of gas. We drove west passed a store on fire about 3:00 or 3:30 PM then turned left, drove out on a field roade in woods about sundown we left woods road went through Cherokee and drove to Mr. Greenhill store to see if the rooling store had come in. it was not parked at the usual parking place so Dennis turned here on drove back pas-ed the church with the lights off said he did not want anybody to see this Ill. tag.

Three times after the plan-ing of this rob-ery I tried to prevent it.

On leaving the store where Dennis checked on the rooling store we drove to top of long hill where we parked. Time about 8:00 or 9:00 PM April 19, 1948.

(S.) Jesse Blackburn.

6.

Robert Hal and me got out and left Dennis, Burneice and Dorthy in car. I carried small wrench which I now identify as the one I used. Shirt I was wearing that night I identify as same which had blood on it and was washed out by Burneice Moore the night we spent in Nashville. The hat officers found in Rolling Store I identify it as the one Robert Hal was wearing at the time of the rob-ery, but this hat belonged to me. I now have been presented with a heavy tire toole which officers said was found in Rooling Store, I identify it as the one Robert Hal used to hit the driver of the rooling store, three times on the head.

On April 15 about 8:00 PM we went to Mr. Taylors store, got some cocalas in order to see how much money he had with the understanding we would rob him later. Dennis said he keep- a lot of money and he don't take it home with him when he closes up. I told Dennis, he had been to- nice to us and all agreed to waite and rob the Rooling store.

[fol. 79] I flag-ed the Rooling store down on steap part of hill. Sound like he said don't stop me on this hill go on up yonder and I will waite on you.

(S.) Jesse Blackburn.

7.

At this point Robert hollered from behind the big sewer pipe where he was hid that Son of a Bitch a-nt going to stop, get on up in there. He rushed up behind me as I step-ed on running board, gave me a quick shove which forced me in behind the drivers seat. He, Robert said this is a stick up and hit the driver three times with the tire toole I have just identified.

He fell back with his head on my right chest and got blood on my shirt and right arm. Robert Hal said lets get him out of the seat.

I got him by the right suspender and lefted him up, at

the same time Robert gave him a shove into the -isle of the store.

Robert then got in drivers seat. Said I will move the truck out of road. Robert was trying to get truck started. Dennis backed up in buick car, stop-ed about 10 yards of truck, jumped in truck and I see a car coming up the road. He said let me drive the truck and you all get the money. While I was get-ing the money which was all change out of the right front pocket, Robert was going through

(S.) Jesse Blackburn

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his other pockets.

Dennis said I can't get the truck started, you, Robert, get in the Buick and we will be on soone.

Before Robert left truck he handed me a brown leather folder with strap on it, and a regular pocket bill folder.

Dennis put some rocks under the truck wheels to keep it from rooling backwards, and we all jumped in the buick and took off going north where we turned right on paved highway going to Decatur. On leaving scene of rob-ery Robert was driving, I was on front seat in middle, Dennis sitting on my right, Dorthy and Burnice on back seat. We stop-ed soone after get-ing on paved road at a service station which was closed. Robert got in back seat and Dennis Thorne got under the wheel. Next stop was made at a brick front Service Station where we bought $2.00 worth of gas from a col. man which was paid in silver out of the money we had took off the man we had just rob-ed. On leaving this station going East for Decatur, we started to count the money, I told Robert to hold his hat [fol. 80] and I counted the money out of

(S.) Jesse Blackburn.

9.

the big folder. I put it in Roberts hat who was sit-ing on back seat. I counted to $47.00 when Robert said give it to me and Burnice and you help Dennis watch the hi-way, we will count the money.

Dennis driving, Dorthy in mid-le, me on right side in front seat of car, so we took Roberts word for the amount

of money, which he said was $117.00. He then give me $28.00 and gave Dennis some mon-y but I do not know how much he got. Next stop was in Decatur.

I told Dorthy if the officers stop-ed us for her to put the silver in her bras-ier-.

We stopped near Vine St. where Robert went and got a pistol.

I wad-ed up some checks Robert had given me out of the little bill folder and flushed them through the toilet at Susie Wrights house who runs the green frog cafe in Decatur. We spent about 10 mins. in Decatur and we all took off for Nashville, Tenn. We arrived there about 1:00 AM, where we went to a restaurant, all ate, bill was about $14.00, included food beer and whiskey. While there Robert and Den-is played the rockola and put some of the change we had

(S.) Jesse Blackburn.

10.

in slot machines.

We went from the resta-rant to the Carver Hotel, where we got a room. I was in roome by myself. Robert and Bernice was in roome together. Dennis and Dorthy was in roome next to mind.

They ask me to change rooms with them as they had twin beds in their roome and the- wanted to sleep together which I did.

About 2:00 or 2:15 PM April 20, 1948 we left Nashville heading for Chicago. We bought some whiskey somewhere between Nashville an- Louisville, Ky. We stop-ed in Louisville, Ky. where we went to Pool roome and Robert Hal played some poole. We went on back to the place where they gamble and all shot some craps. I lost all the money I had, $14.00, Robert lost all he had, amount of $30.00, Dennis won about $60.00 or $65.00. We left Louisville about 1:00 AM, Wed. April 21, 1948.

We heard a call on radio where we was wanted in Ala. So we headed for Chicago.

Soone out of Louisville Robert said we had better get another tag off a car just like mine.

(S.) Jesse Blackburn.

[fol. 81] 11.

We drove about 22 milgs Robert said there is a Buick just like mine, Stop Dennis and we will get the tag.

Robert and me got out of car and he got the rear tag off this buick.

I took the tag off the front of Roberts car and he took the tag off the rear and put on the Ky. tag.

We then drove to Robert Hals mothers house in Gary, Ind.

The note the officers took off me when I was put in Colbert Co. Jail is in my own handwrighting and the reason I wrote it, was because the men in jail with me in Indiana told me to write this note so me and these two girls would not be purnished fot something Robert Hal had done.

(S.) Jesse Blackburn.

Witness:

W. G. Stanford, Lee McCorkle, James H. Riner.

Sworn and subscribed to before me this 10th day of May 1948.

Sallie May Craig, Notary Public.

My commission expires Feb. 3, 1951. (Seal).

The States rests on voir dire.

Defendant rests on voir dire.

By the Court: I think, in view of the Supreme Court ruling in the Redwine case and the evidence here, the statement should be admitted in evidence. Defendant excepts.

[fol. 82] (Jury called back.)

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W. G. Stanford, a witness for the State, having been first duly and legally sworn, recalled for continuation of examination, testified as follows:

Direct examination.

By W. L. Almon:

Q. Mr. Stanford, I have in my hand here a statement, dated May 8, 1948, purporting to have been signed by the defendant, Jesse Blackburn, and witnessed by you, Lee Mc-

Corkle, and James H. Riner, and sworn and subscribed to on the 10th day of May, 1948, before Mrs. Sallie May Craig, Notary Public—Will you look at the statement—Is that the statement you procured in the jail on May 8, 1948 from the defendant?

A. It is.

Q. Was this statement signed by him?

A. It was.

Q. What day was it signed by the defendant?

A. It was signed on the 10th day of May, 1948.

Q. When did you question the defendant and where to get him to make this statement?

A. At the county jail.

Q. What date?

A. It started on May 8, 1948.

Q. Who was present at that time?

A. Sheriff McCorkle and J. H. Riner.

Q. On May 8, 1948, when the statement was procured at the County jail in your presence and in the presence of Lee McCorkle and J. H. Riner, did you or Lee McCorkle or J. H. Riner, or anyone in your presence or hearing——

By the Court: I think that's already in the record.

By Mr. Almon:

Q. Will you look at the signature, Jesse Blackburn—is the name Jesse Blackburn signed to this statement?

A. It is.

Q. Is that the signature of the defendant, Jesse Blackburn?

A. That's his signature.

Q. Did he sign it in your presence?

A. Yes, sir.

[fol. 83] Q. And in the presence of whom else?

By the Court: He has testified that.

Q. Was the statement sworn to on the 10th of May, 1948?

A. Yes, sir.

Defendant objects because the evidence already shown that Mr. Stanford didn't take the acknowledgment, but somebody else did.

By the Court: Objection sustained. I think you covered

that. Mr. Solicitor, ask him if he talked to the defendant and reduced the statement to writing.

By Mr. Almon:

Q. Did you talk to the defendant there to get him to make a statement?

A. Yes, sir.

Q. Did you ask him questions?

A. Yes, sir.

Q. Did he answer your questions?

A. Yes, sir.

Q. After you questioned him and he answered your questions, did you reduce his statement to writing?

A. I put it in the form of a statement as he gave it to me.

Q. Is that the statement he made to you on May 8, 1948?

A. Yes, sir.

Q. Was it read to him before he signed it?

A. It was.

Q. Did you tell him it could and would be used against him?

A. It is in this statement.

Q. Did you read that entire statement to him before he signed it?

A. I did.

Q. Did you or Sheriff McCorkle or Bo Riner when preparing the statement or when he signed the statement threaten the defendant to get him to sign it?

A. No, sir.

Q. Did you abuse him any way to get him to sign the statement?

A. No, sir.

By Mr. Poellnitz: May I ask some questions on voir dire?

By the Court: Yes, sir.

By Mr. Poellnitz:

Q. Mr. Stanford, when did you start questioning the defendant in relation to this statement that the Solicitor has been asking you about?

A. On that day.

Q. And about what time of the day?

[fol. 84] A. Well, it was something after dinner as well

as I remember when I started talking to Jesse, which would have been somewhere around one o'clock; I don't remember exactly.

Q. How long did you talk to him?

A. Until supper time and we eat supper and then come back.

Q. What time did you eat?

A. I usually eat around six o'clock.

Q. You talked to him from one o'clock to six o'clock?

A. About that.

Q. What time did you come back?

A. It usually takes about an hour for supper.

Q. That would put you back at seven o'clock?

A. I don't know exactly.

Q. How long did you talk to him after supper?

A. I would say from seven to maybe ten or eleven o'clock that night before I got it reduced to writing.

Q. That was May 8, 1948?

A. Yes, sir.

Q. He didn't sign it at that time?

A. No, sir.

Q. He signed it the following Monday?

A. Yes, sir.

Q. You talked to him from about one o'clock on May 8, 1948 until ten or eleven o'clock that night with the intermission for dinner?

A. Yes, sir, about that, I don't know exactly.

Q. Where did the talks take place?

A. At jail.

Q. What part of the jail?

A. Part of the time at the desk in the jail and I think part of the time we was in the room at the back where the jailer sleeps.

Q. Describe that room?

A. It is very small—I don't know.

Q. About what dimensions?

A. It would be about four by six, I guess, or maybe six by eight where the jailer is and the stairs going up.

Q. And most of the talk took place in that little room?

A. Yes, I was sitting at the desk.

Q. And Jesse Blackburn was there and Sheriff McCorkle and Mr. Riner?

[fol. 85] Yes, Mr. McGorkle and Mr. Riner were there part of the time.

Q. You were there all the time?

A. Yes, sir.

Q. Were they there together or one at a time?

A. Part of the time they were both there and part of the time both were gone; I was there most of the time with Jesse Blackburn by myself.

Q. They came in at intervals?

A. They was in and out.

Q. Were they there at night some?

A. Yes, sir.

Q. And the questioning took place mostly in that room in question and answer form?

A. Yes, sir, orally.

Q. You asked questions—did Sheriff McGorkle ask some?

A. Each one of them might have at times.

Q. The questions pertained to the case we are trying now?

A. Yes.

Q. Did you write any part of this statement after you left Saturday night and between Saturday night and the time it was signed?

A. No, sir.

Q. It was all written there on Saturday night, May 8th?

A. Yes, in the presence of Jesse.

Q. Is this your handwriting?

A. Yes, it is.

Q. You reported to this Court, did you not, that Jesse Blackburn's actions along about that time were peculiar and you suggested to the Court——

The State objects because it is illegal, irrelevant, incompetent——

By Mr. Poellnitz: Let me finish the question.

Q. And you suggested to the Court that a lunacy investigation be made about him, didn't you?

The State objects because it is illegal, irrelevant, incompetent and immaterial. Objection overruled.

A. After he had been in jail there for quite some time, he showed signs of insanity.

Q. You told the Court about it?

A. Yes, sir.

Q. And you told Sheriff McCorkle about it?

A. That's right.

[fol. 86] Q. Did you recommend that the Court have a doctor see Jesse Blackburn to see about his mental condition?

A. No, I didn't, but the Sheriff did.

Q. Did you recommend to the Sheriff that he take those steps?

A. No, he took them because of the boy's actions while he was in jail.

Q. Now, at the time you questioned Jesse Blackburn I think you have testified that you were the Chief Deputy Sheriff of Colbert County?

A. That's right.

Q. Did you have a badge on at that time—a Sheriff's badge?

A. I don't remember.

Q. Do you recall whether you had a weapon of any kind, or did you carry a gun?

A. I don't remember; sometimes I question a witness without a gun on; I take my belt and gun and put it away, and sometimes I do have one—this particular case, I can't remember.

Q. Did Mr. Riner have a gun on him?

A. I can't say.

Q. The same thing applies to him?

A. Yes, sir.

Q. Do you recall whether Sheriff McCorkle had his gun on when you were questioning Jesse Blackburn?

A. I don't remember.

Q. The same thing applies to him?

A. That's right.

Q. Did you find any papers or records on Jesse Blackburn at the time—did you search him?

The State objects because it is immaterial what he found on him.

Question is withdrawn.

Q. Did you know at the time you examined Jesse Black-

burn to get this statement that has been marked State's Exhibit "A" that he had been in an insane hospital?

A. No, sir.

Q. Did you ask him about that?

A. I think he told me that he had been.

Q. He told you at the time you were questioning him that he had been in an insane hospital?

A. Yes, sir.

Q. Did he tell you that he had been in there since 1944?

A. I don't remember about the time.

[fol. 87] Q. But he made known to you that he had been subject to mental treatment?

A. He told me that he had been in an insane hospital but that he had been released.

By Mr. Almon:

Q. At the time you were questioning him and he was making the statement, did he at that time appear to be rational or irrational?

Defendant objects because the witness is not qualified to testify about the mental condition of the defendant, and it is incompetent and illegal. Objection sustained.

By the Court: Mr. Solicitor, we will allow you to ask if he talked rational.

By Mr. Almon:

Q. When you questioned him did he talk rational?

Defendant objects because the witness is not qualified and it is incompetent and illegal. Objection overruled. Defendant excepts.

A. He talked sensible and give sensible answers.

Q. From his behavior was he normal or abnormal?

Defendant objects because the witness is not qualified to testify about the mental condition of the defendant, and it is incompetent and illegal. Objection sustained.

By the Court: Gentlemen, in the case of Parrish v. State it is held that whether or not someone talked rational is a good question.

Q. Did you look at him and observe his eyes?

A. Yes, sir.

Q. Were they clear?

Defendant objects because it is illegal and incompetent and the witness is not qualified. Objection overruled. Defendant excepts.

A. They were.

Q. Did he appear to be nervous at that time?

Defendant objects because it is illegal and incompetent and the witness is not qualified. Objection overruled. Defendant excepts.

A. No, sir.

Q. From your observation of him, from his speech and from his action, did you see or observe anything about his behavior or conduct to indicate to you an abnormal state of mind?

Defendant objects because it calls for his conclusion and the witness is not qualified and it is incompetent and illegal. Objection sustained.

[fol. 88] Q. Before you. When you went in to talk to Jesse Blackburn, did you tell him who you were, that you were Deputy Sheriff of Colbert County?

A. I did.

Q. Did you introduce the other Deputy and the Sheriff?

A. That's right, we all identified ourselves; he knew who we were at the time.

The State offers the statement in evidence as Exhibit "D" to this witness' testimony.

The defendant objects because the corpus delicti has not been proven; the statement is not shown to have been voluntarily made; it is not shown that the witness had the mental capacity to be a witness; it is affirmatively shown on the voir dire that the witness was insane at the time of making the statement; the proper predicate has not been laid; the statement has not been properly identified; the statement is otherwise incompetent and illegal; the statement is hearsay; the statement is an attempt to prove the corpus delicti by a confession. Objection overruled. Defendant excepts.

Q. Will you read the statement?

The defendant objects because the corpus delicti has not been proven; the statement is not shown to have been voluntarily made; it is not shown that the witness had the mental capacity to be a witness; it is affirmatively shown on the voir dire that the witness was insane at the time of

making the statement; the proper predicate has not been laid; the statement has not been properly identified; the statement is otherwise incompetent and illegal; the statement is hearsay; the statement is an attempt to prove the corpus delicti by a confession. Objection overruled. Defendant excepts.

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[fol. 89] STATE'S EXHIBIT "D"

May 8, 1948.

My name is Jessie Blackburn (Col.) Age 24—904 South Walcott Av., Chicago, Ill.

I willingly make the following statement to W. G. Stanford, Chief Deputy Sheriff of Colbert Co., Ala.

In the presence of Lee McCorkle, Sheriff of Colbert Co., Ala., and J. H. Riner, Deputy Sheriff of Colbert Co., Ala. I make it without fear or threat or promise or reward, and realize it can be used against me in a Co-rt of law.

On Sunday AM April 4—about 1:30 AM Dennis Thorn was in resta-rant located at 5016 Cottage Grove Ave., Chicago, Ill. eating a Sandwich.

I was Employed at this cafe.

My Brother in law Sandy Buford who own- and operates a garauge in same building known as Parkway Garauge come in Cafe and told me my Brother had been killed in Pittsburg-, Penn.

After talking to my mother who lives at 451 East 50 St., she requested I go to Decatur to make funeral arrangements. Dennis Thorne was with me during this conversation. Dennis said, you remember Robert Hal, He will be glad to carry you down south to the funeral, so he can meet his payment on the 18 of April on car

(S.) Jesse Blackburn.

2.

which was due on this date. I knew the car as a 1947 Buick, 2 door, maroone, Ill. license Tag ——.

Robert Hal and his wife and Dennis Thorne came to my house about 4:00, April 4, 1948. His wife, Cherry, said if I would pay $125.00 Robert could take me South. I told them I could not pay that much but would agree to pay Robert $50.00 and all expenses.

I gave Cherry Haf $10.00 we left and had car serviced at 35 St. and South Parkway, amount at the Gulf Service Station $23.00, I paid the bill. We carried Cherry home. Robert, Dennis and myself left Chicago about 9:00 AM Sunday, 4th of April for Decatur, Alabama.

We arrived in Decatur about 2:00 AM, April 5, 1948.

I got a room at (Papa Rocks) Hotel on April 5, 1948, about 1:00 PM. He stated I could have the whole 2nd floor. We, Robert Hal, Dennis Thorne, and any of my [fol. 90] friends could spend the rest of our time at Papa Rock while in Decatur.

We went to Jack Thorns house near Al-sboro on April 7. Spent night back to Decatur on April 8, 1948. We stayed there until my Brother was buried on April 11, 1948.

(S.) Jesse Blackburn.

3.

After the funeral we went to my Uncle Luther Moore's house near Huntsville, Ala., where we spent the night.

On Monday, April 12 after leaving Uncle Luther-s we, Robert Hal, Dennis Thorne and me drove to Jack Thorns house, got there about 1:00 PM.

We spent the night at Jacks house. On Tuesday AM, April 13, about 8:00 or 9:00 a Rooling Store passed going toward Al-sboro, Dorthy Thorn- stop-ed truck and bought some groceries.

Robert Hal was sitting on one of Jack Thorne's mules near truck when change was made for a $20.00 bill. When the rooling store left Robert and Dennis told me this is a good way for us to get back to Chicago. Dennis made the statement, he carries a lot of money, Robert said, you aint lying cause I saw it with my own eyes.

April 14, 1948 I ask- Fannie Rodgers mother if I could marry her. She first refused, but on April 16, we did marry in Iuka, Miss.

Fannie and me on this date spent the night at Fuquas home. Next day April 17, 48, Robt. and Dennis come back to Fuquas for Dinner and to pick me and Fannie up.

(S.) Jesse Blackburn.

4.

We went from there to Jacks where we left Fannie (my wife) we told them we were leaving for Chicago this was about 5:00 PM Sat. April 17.

On Sunday April 18 about 4:00 PM or 5:00 PM Dennis brought Bernice Moore and Dorthy Garth and a boy whom I did not know to Papa Rocks Hotel. Where we all spent the night. We left Papa Rocks about 7:00-8:00 AM on Monday, April 19, 1948.

I did not know where they had started but Bernice sug-ested we go to her Aunts house in Cortland. We got there about 8:45 or 9:00. We drove out Moulton road where I saw a frier on side roade. I got out and caught the chicken. We went from there to Coartland where we bought some ir-sh potatoes. We went from there back to Louise Williams, where Bernice and Dorthy cooked. (Breakfast & Dinner) all same meal.

[fol. 91] While Burnice an Dorethy was cooking the meal, we Robert, Dennis and me was out in the yard. Robert said we aint got no money and this is a good time for us to go back and rob the Rolling Store. Dennis said this is a good idea cause he did not run Sat. or Sunday so he should have a good rool on him

(S.) Jesse Blackburn.

5.

tonight. After the meal was fixed we all ate.

Left about 12 or 1:00 PM going west. I did not have any money and if the others had any money I did not know about it. I don't think anybody in the crowd had any money cause Robert said we would pawn the spare tire at the next filling station for some Gas. Not being able to pawn the tire at this station, I saw a col. man coming up the Highway, who arranged for us to get 3 gal. of gas. We drove west passed a store on fire about 3:00 or 3:30 PM then turned left, drove out on a field roade in woods about sundown we left woods road went through Cherokee and drove to Mr. Greenhill store to see if the rooling store had come in. It was not parked at the usual parking place so Dennis turned here on drove back pas-ed the church with the lights off said he did not want anybody to see this Ill. tag.

Three times after the plan-ing of this rob-ery I tried to prevent it.

On leaving the store where Dennis checked on the rooling store we drove to top of long hill where we parked. Time about 8:00 or 9:00 PM April 19, 1948. –

(S.) Jesse Blackburn.

6.

Robert Hal and me got out and left Dennis, Barneice and Dorthy in car. I carried small wrench which I now identify as the one I used. Shirt I was wearing that night I identify as same which had blood on it and was washed out by Barneice Moore the night we spent in Nashville. The hat officers found in Rolling Store I identify it as the one Robert Hal was wearing at the time of the rob-ery, but this hat belonged to me. I now have been presented with a heavy tire toole which officers said was found in Rooling Store, I identify it as the one Robert Hal used to hit the driver of the rooling store, three times on the head.

On April 15 about 8:00 PM we went to Mr. Taylors store, got some *cocalas* in order to see how much money he had with the understanding we would rob him later. Dennis said he keep a lot of money and he don't take it home with him when he closes up. I told Dennis he had been to nice to us and all agreed to waite and rob the Rooling store. [fol. 92] I flag-ed the Rooling store down on steap part of hill. Sound like he said don't stop me on this hill go on up yonder and I will waite on you.

(S.) Jesse Blackburn.

7.

At this point Robert hollered from behind the big sewer pipe where he was hid that Son of a Bitch a-nt going to stop, get on up in there. He rushed up behind me as I step-ed on running board, gave me a quick shove which forced me in behind the driver-s seat. He, Robert said this is a stick up and hit the driver three times with the tire toole I have just identified.

He fell back with his head on my right chest and got blood on my shirt and right arm. Robert Hall said lets get him out of the seat.

I get him by the right suspender and lefted him up, at

the same time Robert gave him a shove into the isle of the store.

Robert then got in dribers seat. Said I will move the truck out of road. Robert was trying to get truck started. Dennis back up in buick car, stop-ed about 10 yards of truck, jumped in truck said I see a car coming up the road. He said let me drive the truck and you all get the money. While I was get-ing the money which was all change out of the right front pocket, Robert was going through

(S.) Jesse Blackburn

8.

his other pockets.

Dennis said I can't get the truck started, you, Robert, get in the Buick and we will be on soone.

Before Robert left truck he handed me a brown leather folder with strap on it, and a regular pocket bill folder.

Dennis put some rocks under the truck wheels to keep it from rooling backwards, and we all jumped in the buick and took off going north where we turned right on paved highway going to Decatur. On leaving scene of rob-ery Robert was driving, I was on front seat in middle, Dennis sitting on my right, Dorthy and Burnice on back seat. We stop-ed soone after get-ing on paved road at a service station which was closed. Robert got in back seat and Dennis Thorne got under the wheel. Next stop was made at a brick front Service Station where we bought $2.00 worth of gas from a col. man which was paid in silver out of the money we had took off the man we had just rob-ed.

On leaving this station going East for Decatur, we started to count the money, I told Robert to hold his hat [fol. 93] and I counted the money out of

(S.) Jesse Blackburn.

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the big folder. I put it in Roberts hat who was sit-ing on bake seat. I counted to $47.00 when Robert said give it to me and Burnice and you help Dennis watch the hi-way, we will count the money.

Dennis driving, Dorthy in mid-le, me on right side in front seat of car, so we took Roberts word for the amount

of money, which he said was $117.00. He then give me $28.00 and gave Dennis some mon-y but I do not know how much he got. Next stop was in Decatur.

I told Dorthy if the officers stop-ed us for her to put the silver in her bras-ier-.

We stopped near Vine St. where Robert went and got a pistol.

I wad-ed up some checks Robert had given me out of the little bill folder and flushed them through the toilet at Susie Wrights house who runs the *green frog cafe* in Decatur. We spent about 10 mins. in Decatur and we all took off for Nashville, Tenn. We arrived there about 1:00 AM, where we went to a restaurant, all ate, bill was about $14.00, included food beer and whiskey. While there Robert and Den-is played the rockola and put some of the change we had

(S.) Jesse Blackburn.

10.

in slot machines.

We went from the resta-*rant* to the Carver Hotel, where we got a room. I was in roome by myself. Robert and Bernice was in roome tog*a*ther. Dennis and Dorthy was in roome next to min*d*.

They ask me change rooms with them as they had twin beds in their roome and they wanted to sleep tog*a*ther, which I did.

About 2:00 or 2:15 PM April 20, 1948 we left Nashville heading for Chicago. We bought some whiskey somewhere between Nashville an- Louisville, Ky. We stop-ed in Louisville, Ky. where we went to Pool roome and Robert Hal. played some pool*e*. We went on back to the place where they gamble and all shot some craps. I lost all the money I had, $14.00, Robert lost all he had, amount of $30.00, Dennis won about $60.00 or $65.00. We left Louisville about 1:00 AM, Wed. April 21, 1948.

We heard a call on radio where we was wanted in Ala. So we headed for Chicago.

Soone out of Louisville Robert said we had better get another tag off a car just like mine.

(S.) Jesse Blackburn.

[fol. 94] 11.

We drove about 22 miles Robert said there is a Buick just like mine, Stop Dennis and we will get the tag.

Robert and me got out of car and he got the rear tag off this buick.

I took the tag off the front of Roberts car and he took the tag off the rear and put on the Ky. tag.

We then drove to Robert Hals mothers house in Gary, Ind.

The note the officers took off me when I was put in Colbert Co. Jail is in my own handwrighting and the reason I wrote it, was because the men in jail with me in Indiana told me to write this note so me and these two girls would not be purnished for something Robert Hal had done.

(S.) Jesse Blackburn.

Witness: W. G. Stanford, Lee McCorkle, James H. Riner.

Sworn and subscribed to before me this 10th day of May 1948. Sallie May Craig, Notary Public, My commission expires Feb. 3, 1951 (Seal).

Defendant moves to exclude the confession on the grounds that the corpus delicti has not been proven, the statement is not shown to have been voluntarily made, it is not shown that the witness had the mental capacity to be a witness, it is affirmatively shown on the voir dire that the witness was insane at the time of making the statement, the proper predicate has not been laid, the statement has not been properly identified, the statement is otherwise incompetent and illegal, the statement is hearsay, the statement is an attempt to prove the corpus delicti by a confession, and on the additional grounds that it is shown affirmatively not to have been voluntarily made, that the defendant was mentally incompetent to make the statement at the time it was made, that the statement has not been properly identified, that the statement has not been introduced after proper predicate has been laid, and that it is incompetent and illegal.

Motion overruled. Defendant excepts.

By Mr. Almon:

Q. Mr. Stanford, did you show both of the hats that you have exhibited in the trial to the defendant?
[fol. 95] A. I did.

Q. I show you this hat which you have already identified as Exhibit "B", is that the hat that Jesse said was his?

A. I tagged it——

Defendant objects because the hat is not properly identified, the proper predicate is not laid and the corpus delicti other than by confession has not been established.

By the Court:

Q. Mr. Stanford, you say that Jesse Blackburn admitted that was the hat he had on, was that at the same time you were questioning him and reduced some matters to writing and put it in the form of the confession you read?

A. This hat was found in the truck the night of the robbery.

Defendant objects and moves to exclude that——

Q. Did he admit that was his hat at the same time you took the statement from him?

A. He did.

Q. And as a part of the same statement?

A. That's right.

Objection overruled. Defendant excepts.

The State introduces this hat as Exhibit "B".

The defendant objects to the introduction of State's Exhibit "B" in evidence and as grounds for the objection assigns separately and severally the following: That the exhibit has not been properly identified, that the exhibit relates to a purported confession which is not shown to have been made voluntarily, that the exhibit relates to a purported confession for which a proper predicate has not been laid, that the exhibit is prejudicial and inflammatory and is offered by way of an admission or confession on the part of the defendant prior to the proof of the corpus delicti, that the exhibit seeks to prove by way of confession the corpus delicti, and it is illegal, irrelevant, incompetent, and immaterial. Objection overruled. Defendant excepts.

(This hat was admitted in evidence as State's Exhibit "B", but cannot be placed in this transcript by the Court Reporter.)

By Mr. Almon:

Q. Is this hat here which I exhibited this morning as Exhibit "A", the hat you found in the Rolling Store on the night of the alleged robbery by you?

A. That was picked up inside the truck.

[fol. 96] We offer that as Exhibit "A" to this witness' testimony.

Defendant objects to the introduction of State's Exhibit "A" in evidence and as grounds for the objection assigns separately and severally the following: That the exhibit has not been properly identified, that the exhibit relates to a purported confession which is not shown to have been made voluntarily, that the exhibit relates to a purported confession for which a proper predicate has not been laid, that the exhibit is prejudicial and inflamatory and is offered by way of an admission or confession on the part of the defendant prior to the proof of the corpus delicti, that the exhibit seeks to prove by way of confession the corpus delicti, and it is illegal, irrelevant, incompetent, and immaterial, and on the further ground that the exhibit has not been properly identified as belonging to the defendant or as having any connection with the defendant.

By Mr. Almon: There were two of them.

Objection overruled. Defendant excepts.

(This hat was admitted in evidence as State's Exhibit "A", but cannot be placed in this transcript by the Court Reporter.)

Q. I have here which you described this morning and identified in your testimony as Exhibit "C" as a tire tool —is that the tire tool that you found in the folling store on the night of the alleged robbery April 19, 1948?

A. It is.

Q. Did you show that instrument—that tire tool—to the defendant, Jesse Blackburn when he was answering questions and when you were procuring the statement, and when the statement was read to him—Did you?

A. Yes, I did.

Q. Did he admit that was the tire tool used by Robert Howell in striking the victim three times over the head?

Defendant objects because it is illegal, irrelevant, incompetent and immaterial and it seeks to be a confession for which the proper predicate has not been laid, it seeks to be a confession sought to be introduced prior to proof of the corpus delicti, it is an attempt to establish the corpus delicti by confession only, and it is not properly identified as belonging to the defendant.

Objection overruled. Defendant excepts.

Q. Was that tire tool found by you in the Rolling Store when you made the investigation of the alleged robbery on the night it is alleged to have occurred?

A. It was.

[fol. 97] Q. You stated this morning that it had been under lock and key since it was found by you?

A. That's right.

Q. Is it substantially and fairly in the same condition now as it was when you found it in the rolling store?

A. Yes, except for the blood.

The State offers the tire tool as Exhibit "C" to the testimony of this witness.

The defendant objects to the introduction of State's Exhibit "C" in evidence and as grounds for the objection assigns separately and severally the following: That the exhibit has not been properly identified, that the exhibit relates to a purported confession which is not shown to have been made voluntarily, that the exhibit relates to a purported confession for which a proper predicate has not been laid, that the exhibit is prejudicial and inflammatory and is offered by way of an admission or confession on the part of the defendant prior to the proof of the corpus delicti, that the exhibit seeks to prove by way of confession the corpus delicti, and it is illegal, irrelevant, incompetent, and immaterial, and on the further ground that the exhibit has not been properly identified as belonging to the defendant or as having any connection with the defendant.

By the Court: The Court reserves the ruling to ask some questions.

Q. Mr. Stanford, you stated a moment - that it was sub-

stantially in the same condition except the blood, what do you mean?

Q. When we picked it up out of the store it had blood on it and it has dried now and come off.

By the Court: Objection overruled. Defendant exeepts.

(This tire tool was admitted in evidence as State's Exhibit "C", but cannot be placed in this transcript by the Court Reporter.)

By Mr. Almon:

Q. I have here a wrench, a light colored wrench—will you examine that? Did you have that wrench in your possession when you questioned Jesse Blackburn regarding the alleged robbery and procured the statement introduced in evidence?

A. I did.

Q. State whether or not that is the instrument he admitted in his statement when you showed it to him that he used that night when he stopped the Rolling Store?

[fol. 98] Defendant objects because it is illegal, irrelevant, incompetent, and immaterial, and seeks to be a confession without the proper predicate having been laid, it is an attempt to introduce a confession on the part of the defendant prior to proof of the corpus delicti, it is an attempt to prove the corpus delicti by way of confession only, it has not been properly identified as belonging to the defendant, or being any part of anything that did belong to the defendant, it is not properly identified as being part of the res gestae, and it is illegal, irrelevant, incompetent, immaterial, prejudicial and inflammatory. Objection sustained.

Q. How long have you had that instrument in your possession?

A. It was brought back with the——

Q. How long have you had it in your possession, since what date?

A. Since the date he was placed in Jail in Colbert County.

Q. Where did you get it?

A. The officers in Gary, Indiana——

The defendant objects——

By Mr. Almon: I knew that was in it. I wanted to ask if he had it when he got the statement on May 8, 1948, and if the defendant identified it as being in his possession on the night of the alleged robbery.

By Mr. Poellnitz: The defendant objects if that is a question—it may have been a statement to the Court, I don't know. Objection sustained.

By Mr. Almon:

Q. At the time the defendant made this statement which has been introduced in evidence and which was reduced to writing, did you show that instrument to the defendant at that time and place?

A. Yes, sir.

Q. And did he at that time and place on the afternoon of May 8, 1948, admit to you when he was making this statement after you showed him that instrument that that was the instrument he used on the night of April 19, 1948 when he stopped the rolling store?

Defendant objects because it is illegal, irrelevant, incompetent, and immaterial, and seeks to be a confession with the proper predicate having been laid, it is an attempt to introduce a confession on the part of the defendant prior to proof of the corpus delicti, it is an attempt to prove the corpus delicti by way of confession only, it has not been properly identified as belonging to the defendant, or being any part of anything that did belong to the defendant, it is not properly identified as being part of the res gestae, and [fol. 99] it is illegal, irrelevant, incompetent, immaterial, prejudicial and inflammatory.

By the Court:

Q. Mr. Stanford, if he identified that iron tool that you have in your possession, did he do so as a part of the same statement that you testified you took from him and which you read to the Jury?

Defendant objects because it is illegal, irrelevant, incompetent, and immaterial, and seeks to be a confession with the proper predicate having been laid, it is an attempt to introduce a confession on the part of the defendant prior to proof of the corpus delicti, it is an attempt to prove the

corpus delicti by way of confession only, it has not been properly identified as belonging to the defendant, or being any part of anything that did belong to the defendant, it is not properly identified as being part of the res gestae, and it is illegal, irrelevant, incompetent, immaterial, prejudicial and inflammatory.

By the Court: I want to determine if there were threats —objection overruled. Defendant excepts.

A. At the same time, Judge.

Q. And as a part of the same statement?

A. Yes, in the statement he said, 'I now identify the tool I used', which is this tool, the one Jesse said he had when he got on the Rolling Store.

Defendant objects and moves to exclude that voluntary statement on the grounds it is illegal, irrelevant, incompetent, and immaterial, and seeks to be a confession without the proper predicate having been laid, it is an attempt to introduce a confession on the part of the defendant prior to proof of the corpus delicti, it is an attempt to prove the corpus delicti by way of confession only, it has not been properly identified as belonging to the defendant, or being any part of anything that did belong to the defendant, it is not properly identified as being part of the res gestae, and it is illegal, irrelevant, incompetent, immaterial, prejudicial and inflammatory.

By the Court: Motion sustained as to the part that was voluntary; that's excluded.

By Mr. Almon:

Q. Who was present at the time the instrument was shown to the defendant?

A. I wouldn't—I don't know whether anybody was present or not; Jesse and me might have been by ourselves, we was quite a bit.

Q. Was that Saturday afternoon, May 8, 1948 in the Colbert County Jail?

[fol. 100] A. It was the same time I took the statement.

Q. Did you or anyone in your presence or hearing offer the defendant any inducement to get him to make a statement?

A. No, sir.

Q. Did you or anyone in your presence or hearing tell the defendant it would be better if he made a statement or worse if he did not make a statement?

A. No, sir.

Q. Did you or anyone in your presence or hearing threaten the defendant to get him to make a statement?

A. No, sir.

Q. Did you or anyone in your presence or hearing tell the defendant it would be better if he made a statement or that he would get a lighter sentence?

A. No, sir.

Q. Did you or anyone in your presence or hearing tell the defendant if he did not make a statement he would get more time?

A. No, sir.

Q. What statement did he make to you when you showed him the instrument you have in your hand?

Defendant objects because it is illegal, irrelevant, incompetent and hearsay; it seeks to elicit testimony about a purported confession about which a proper predicate has not been laid and it seeks to elicit testimony about a purported confession prior to proof of the corpus delicti, and the confession is not shown to have been voluntarily made.

Objection overruled. Defendant excepts.

A. Jesse said this was the tool he had when he got on the truck.

The State offers in evidence the tool as Exhibit "E" to the testimony of this witness.

Defendant objects to the introduction of State's Exhibit "E" in evidence and as grounds for the objection assigns separately and severally the following: That the exhibit has not been properly identified, that the exhibit relates to a purported confession which is not shown to have been made voluntarily, that the exhibit relates to a purported confession for which a proper predicate has not been laid, that the exhibit is prejudicial and inflammatory and is offered by way of an admission or confession on the part of the defendant prior to the proof of the corpus delicti, that the exhibit seeks to prove by way of confession the corpus delicti, and it is illegal, irrelevant, incompetent, and immaterial, and on the further ground that the exhibit has

not been properly identified as belonging to the defendant [fol. 101] or as having any connection with the defendant. Objection overruled. Defendant excepts.

(This instrument was admitted in evidence as State's Exhibit "E", but cannot be placed in this transcript by the Court Reporter.)

Q. Did you see Mr. Thomas Clyde Wright on Monday night, April 19, 1948?

A. No, sir.

By Mr. Poellnitz: We may have one question to ask Mr. Stanford tomorrow if the case goes into tomorrow, but now we don't have.

By the Court: All right, call the next witness.

---

Mrs. Kathleen Hubbard, a witness for the State, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Hollingsworth:

Q. Is this Mrs. Kathleen Hubbard?

A. That's right.

Q. Where do you live?

A. At Margerum, Alabama.

Q. Where were you living about the 19th of April, 1948?

A. Near Margerum, Alabama.

Q. Do you remember when it is alleged that Mr. Thomas Clyde Wright was robbed?

A. It was the 19th day of April, 1948.

Q. Do you remember that date?

A. Yes, sir.

Q. Did you have occasion to go the road that leads up Crowell Hill?

A. Yes, sir.

Q. After dark?

A. We didn't go up the hill; we came down the hill.

Q. Did you see any vehicles on the road?

A. Yes, sir.

Q. What did you see?

A. I saw this Rolling Store that Clyde drove and a late model car parked beside it.

Q. At that time was the Store parked or in motion?

A. It was parked.

[fol. 102] Q. Did you observe what make of car it was?

A. No, I didn't; I could see it was a late model car.

Q. Did you observe the license plates on the automobile?

A. No, sir.

Q. Did you observe whether or not people were in the automobile at that time?

A. No, I didn't, I was riding in the back seat of the car.

Q. Approximately what time of night was this?

A. Between nine and nine-thirty.

Q. Did you hear a noise coming from the Rolling Store?

A. There was a rumbling sound.

Q. Describe what you mean?

A. It sounded like something had been bumped or someone moved something heavy.

Q. Do you tell the Jury that this sound came from the direction of the Rolling Store?

A. Yes, sir.

Q. Who was with you?

A. My husband and Perry Murphy and J. C. Jaynes.

Q. What rate of speed were you travelling?

A. I don't know.

Q. Your judgment—five, fifteen, thirty or what?

A. About thirty, I guess.

Q. Did you slow up or speed up when you came to the Rolling Store?

A. We slowed up and went to the back of it and stopped.

Q. What did you hear then?

A. This rumbling sound.

Q. Did you get out of your automobile or did anyone?

A. No, sir.

Q. What did you do?

A. We stopped and someone mentioned getting out and decided not to and we went home.

Q. You went home?

A. Yes, sir.

Q. What did you do then?

A. My husband got his rifle and we left and went to his cousin's, and they went back, but I didn't.

Q. How far do you all live from the place where the Rolling Store was?

A. About two miles.

Q. Your husband is Mr. James Hubbard?

[fol. 103] Yes, sir.

Cross-examination.

By William H. Mitchell, Jr.:

Q. When you stopped your car, did you stop behind the Rolling Store as you approach it or after you got past it?

A. After we got past it.

Q. How far past it?

A. I would say twenty to thirty feet.

Q. Had you slowed down before you got to it or after?

A. As we got to the top of the hill, we slowed down and as they got to this Store and car they slowed down, and then we stopped.

Q. You don't know what caused the rumbling sound?

A. No, sir.

Q. You couldn't say who was there?

A. No, sir.

Q. You didn't see anyone in the car?

A. When we got past and stopped, this car pulled up to the top of the hill and stopped.

Q. But you didn't see anyone in it?

A. No, sir.

Q. And you didn't see anyone in the rolling store either?

A. No, sir.

---

James Hubbard, a witness for the State, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Hollingsworth:

Q. Is this Mr. James Hubbard?

A. That's right.

Q. Mr. Hubbard, on or about the 19th day of April, 1948, did you know Mr. Clyde Wright?

A. Yes, sir.

Q. And did you live—how far did you live from the Store there?

A. From the Store that Mr. Greenhill owns?

Q. Yes, sir.

A. About a mile and a half.

[fol. 104] Q. Do you remember the incident when it is alleged that Mr. Wright was robbed?

A. Yes, sir.

Q. Did you have occasion to be on the road there that runs over Crowell hill?

A. Yes, sir, I was coming in from school on Monday night.

Q. You say it was on Monday night?

A. Yes, sir.

Q. What time?

A. Between nine and nine-thirty.

Q. How were you travelling?

Q. With Mr. Perry Murphy, in his automobile.

Q. Who was in the automobile?

A. Perry Murphy, Jake Jaynes, my wife and myself.

Q. Coming down or up the hill?

A. Coming up the hill.

Q. Did you see the Rolling Store?

A. Yes, sir.

Q. Was it the one that Mr. Wright drives?

A. Yes, sir.

Q. Did you see any other vehicle?

A. Yes, there was one by the Rolling Store when we topped the hill.

Q. Do you know what kind it was?

A. It was a maroon Buick.

Q. Do you know what model?

A. No, sir.

Q. Did you see anyone in the car?

A. No, sir.

Q. What speed were you travelling?

A. I couldn't say exactly, twenty or twenty-five, I guess.

Q. Did you stop in the vicinity of the Rolling Store?

A. We stopped just barely by it.

Q. Did you hear any noise from the Rolling Store?

A. Yes, some kind of bumbling noise.

Q. Describe the bumbling noise?

A. Like someone in there moving.

Q. Were the lights on the other automobile when they pulled up to the top of the hill?

A. They were on.

Q. Did you see the license number on it?

[fol. 105]. A. No, sir.

Q. Did you see what color it was?

A. Maroon.

Q. Did you get out there then?

A. No, sir.

Q. What did you do?

A. Went to my house.

Q. Did you go back?

A. Went right back.

Q. Did you take anything with you?

A. Took my rifle.

Q. Who went back with you?

A. Perry and Jake, and I stopped about a quarter of a mile from it at another boy's and went on later.

Q. When you got there, who did you see?

A. Jake and Perry and Mr. Wright.

Q. What was he doing?

A. Standing there.

Q. Did he say anything?

A. No, he was in a daze.

Q. Did you see any wounds?

A. Yes, sir.

Q. What was it?

A. As far as seeing actual cut places, there was too much blood, but I did see this part of his ear hanging down, (indicating).

Q. Was the maroon Buick that you saw the first time still there?

A. No, it wasn't there then.

(No cross-examination.)

[fol. 106] J. C. JAMES, a witness for the State, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Hollingsworth:

Q. Is this Mr. James?
A. Yes, sir.
Q. What is your first name?
A. J. C.
Q. On or about the 19th day of April, 1948, did you know Mr. Thomas Clyde Wright?
A. Yes, sir.
Q. Do you know what business he was in?
A. Yes, sir.
Q. What business was he in?
A. He was driving a peddling truck.
Q. A rolling store?
A. Yes, sir.
Q. I will ask you if you remember the time it is alleged he was robbed?
A. Yes, sir.
A. Did you have occasion on the night of April 19, 1948 to go over Crowell Hill?
A. Yes, sir.
Q. How were you travelling at the time—in a wagon, automobile or walking?
A. In a Mercury car.
Q. Who was in the car with you?
A. Perry Murphy, James Hubbard and Mrs. Hubbard.
Q. As you came down Crowell Hill did you observe an automobile or a truck on the road there?
A. Yes, sir.
Q. Tell what you observed?
A. Just as we come over the top of the hill and started over, I saw two men approach the car and come up the hill.
Q. Could you see well enough to tell whether they had light or dark complexion?
A. No, I couldn't tell who they were, but you could tell they were colored.

Q. You say they were colored but you couldn't tell who they were?

A. They pulled off in the automobile.

Q. Could you see the type automobile it was?

A. Yes.

Q. What kind was it?

[fol. 107] A. A marpon Buick, looked like a 1946 or 1947 and it had an Illinois license.

Q. Did you all stop?

A. Yes, sir.

Q. Did you get out?

A. No, we started to but the subject come up that somebody might get hurt or killed, so we went on and borrowed a gun and come back.

Q. Who came back with you?

A. Perry Murphy.

Q. What did you find then?

A. Found Mr. Wright at the back and trying to scotch the bus.

Q. Did you say anything to him?

A. No, he was out; he couldn't say anything.

Q. Was he out on his feet?

A. Yes, he was.

Q. Describe his wounds?

A. He was beat up quite badly; his ear here (indicating) seemed to be flopped down, and his head was beat up pretty bad.

Q. Did you go in the Rolling Store then?

A. No, not at the present time.

Q. Did you later go in it?

A. Yes, sir.

Q. What time was it then?

A. Well, between 8:30 and 9 o'clock.

Q. Did you see any *any* stains of any sort?

A. Yes, I did, I seen a couple of hats and a tire iron.

Q. Did you see a tire tool in there?

A. Yes, sir.

Q. Did it have blood stain on it?

A. Yes, sir, it did.

Q. Were you there when the police officers arrived?

A. No, sir.

Q. Did you see the type tag the automobile had on it?
A. Yes, it was an Illinois tag; I have explained that.

(No cross-examination.)

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[fol. 108] Jack Thorne, a witness for the State, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Almon:

Q. State your name.
A. Jack Thorne.
Q. Where were you living on April 19, 1948 when it is said that Mr. Wright was driving a Rolling Store and was robbed?
A. Well, I was living on the—Well, out on Cherokee Star Route, the same place I am living now near the Alsobrooks' place.
Q. Is Dennis Thorne your brother or half-brother?
A. Half-brother.
Q. How long have you been living at this place?
A. Fourteen years.
Q. You had been living there some time prior to April 19, 1948?
A. Yes, sir.
Q. Did you know Mr. Clyde Wright?
A. I knew him well.
Q. Did he come by your house?
A. Yes, sir.
Q. Did you trade with him?
A. Yes, sir.
Q. Regular?
A. Yes, sir.
Q. Something like a week before the alleged robbery, did your half-brother come to visit you?
A. Yes, he was there, but he came down with these boys to a funeral or something; that's the reason he was there but he was there with me.
Q. Where was Dennis living at that time?

A. In Chicago.

Q. Who came down there with him to visit after the funeral?

A. Well, Jesse Blackburn——

Q. Look around and see if you see Jesse Blackburn?

A. Yes, sir.

Q. Jesse Blackburn was there with him?

A. Yes, sir.

Q. Was there another boy named Robert Howell with him?

A. Yes, sir.

[fol. 109] Q. Did they have a Buick automobile?

A. Yes, sir.

Q. Tell the Jury what color it was?

A. Well, it was maroon.

Q. Was it a Buick?

A. Yes, sir, it was a Buick.

Q. What kind of tag did it have?

A. Well——

Q. State whether or not it was an Illinois tag?

Defendant objects to his leading the witness.

By the Court: Don't lead the witness.

A. I didn't really know, but I was thinking it was Illinois.

Q. Is that your best judgment?

A. Yes, sir.

Defendant moves to exclude that because he said he didn't know. Motion sustained.

Q. In your best judgment what kind of tag did it have—what State?

Defendant objects because he has said that he didn't know.

A. I was thinking it was Illinois.

Q. Is that your best judgment?

A. Yes, sir.

Defendant moves to exclude that because he stated that he didn't know. The testimony was put in his mouth by the Solicitor.

Motion sustained, that's excluded.

Q. Does the Rolling Store make regular rounds by your house?

A. Yes, sir.

Q. That is, before then?

A. Yes, sir, before then.

Q. One day there did you about the 13th of April, which would be about six or seven days before the alleged robbery, did you or Dennis or Robert or Jesse or someone make a purchase from the Rolling Store there in your presence?

Defendant objects because the time is not established except by the Solicitor.

By the Court: Objection sustained as that question appears in the record; there is a statement in it that it was some number of days before the robbery, ask the question over and leave that out.

Q. I will ask you if on April 13, 1948, did you or anyone in your presence there when Jesse and Robert and Dennis were there and one of them was on a gray mule, buy some-[fol. 110] thing from Mr. Wright's Rolling Store?

A. Yes, I remember buying something; I didn't get it but my wife or one of them was on the Rolling Store.

Q. Do you remember off-hand what type denomination—what type bill was used, whether it was a ten-dollar bill or a twenty-dollar bill?

A. I wouldn't know just what kind of bill it was——

Defendant objects—Question withdrawn.

Q. But you do remember something was bought?

A. Yes, sir.

Q. And at that time Jesse was present?

A. Yes, sir.

Q. Was there a gray mule there?

A. Yes, sir.

Q. Was one of the boys on it?

A. Yes, sir.

Q. State whether or not it was Robert Howell?

A. I think maybe he was riding one too then, but the gray mule was there.

Q. When did you last see Jesse, Robert and Dennis after——

A. They left my house on Saturday evening.

Q. Before the alleged robbery on Monday?

A. Yes, sir, they left my house on Saturday evening.

Q. Were they in this Buick car then?

A. Yes, sir.
Q. You didn't see them any more?
A. No, sir.
Q. Do you remember what time they left your house?
A. I would say around four o'clock on Saturday evening.

Cross-examination.

By Mr. Poellnitz:

Q. You said that you hadn't seen any of the three boys that you were talking about—you see Jesse Blackburn now, don't you?
A. Yes, sir.
Q. You haven't seen either of the other two since then?
A. No, sir.
Q. You haven't seen your half-brother, Dennis Thorne?
A. No, sir.
[fols. 111-112] Q. And you haven't seen Robert Howell?
A. No, sir.
Q. You didn't see any of these boys on Saturday night, April 16th or 17th?
A. I haven't seen none of them since they left that Saturday evening.
Q. That was about four o'clock?
A. Yes, sir.
Q. And you haven't seen Jesse Blackburn until now?
A. That's right.
Q. You didn't see them around your place on Sunday before the time Mr. Almon asked about?
A. No, sir.
Q. And you didn't see them on Monday?
A. No, sir.
Q. Jesse Blackburn had a wife close to you, didn't he?
A. Yes, sir.
Q. What was her name before she married?
A. Fannie Rogers.
Q. And she lived how far from you?
A. Just a little piece.
Q. You didn't see Jesse Blackburn at that house on Sunday or Monday, did you?
A. No, sir.

Q. You didn't see the automobile Mr. Almon is talking about around there on those days, did you?

A. No, sir.

Re-direct examination.

By Mr. Almon:

Q. Jesse got married on the 15th, a few days before he left, didn't he?

A. Well, I don't know the date, but it was a few days before he left.

Q. Well, while they were down here?

A. Yes, sir.

Q. He married Fannie Rogers?

A. Yes, sir.

Q. And left her down here?

A. Yes, sir.

Defendant objects and moves to exclude that because it is prejudicial and antagonistic. Motion overruled. Defendant excepts.

* * * * * * * *

[fol. 113] Wednesday Morning, April 23, 1953

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Dr. Loren Gary, a witness for the State, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Almon:

Q. State your name.

A. Loren Gary.

Q. Dr. Gary, are you a practicing physician in Colbert County, Alabama?

A. Yes, sir.

Q. Are you a surgeon?

A. Yes, sir.

Q. What school did you graduate from?

A. University of Georgia.

Q. How long have you been practicing medicine?

A. Twenty years.

By Mr. Almon to the Defense Attorneys: Will you, Gentlemen, admit his qualifications?

By Mr. Poellnitz: Yes, sir, but we would like to know a little of the background for the record; we would like for you to ask some questions.

By Mr. Almon:

Q. Where did you study medicine?

A. At the University of Virginia.

Q. How long were you there?

A. Four years.

Q. Did you do interne work?

A. Yes, at the Hospital in Virginia and in Georgia.

Q. Were you resident surgeon there at the Hospital?

A. No, sir.

Q. What other training—what other interne work?

A. At Tulane, Johns Hopkins, Northwestern, and I believe I have been at Duke once since then.

Q. What medical association are you a member of?

A. The American Medical Association, the Southern Medical Association, the Alabama Medical Association, and the Colbert County Medical Association.

Q. Have you had experience in surgery?

A. No, I do general practice.

[fol. 114] Q. Have you had any occasions to see people and treat people with fractured skulls and lacerations on or about the head during your twenty years' experience?

A. Yes, sir.

Q. Have you seen many?

A. Yes, sir.

Q. Did you see Thomas Clyde Wright on the night of Monday, April 19, 1948?

A. Some time in the early part of the night, around 8:30 at night that date.

Q. Where did you see him?

A. In the Colbert County Hospital in the emergency room.

Q. It could have been later, couldn't it?

A. It was night, that's as late as I can put it.

Q. You have many cases to treat?

A. Yes, sir.

Q. But you are sure you saw him that night?

A. Yes, sir.

Q. What was his condition at the time?

A. At the time I saw him there he was unconscious, and bleeding from the nose and ears, rather profusely from the left ear.

Q. What does that indicate?

A. Bleeding from the nose indicates usually head injury, a fracture of the middle or frontal of the skull, and usually the bleeding from the ear is from the posteria portion of the skull, or the back base of the skull.

Q. Did you examine the wounds to tell the extent of them?

A. There were three long wounds across the lateral side of the skull on the left.

Q. About where?

A. Right about here and the ear was almost off on that side.

Q. Did you make any X-rays that night or later?

A. No, he was unconscious and it was felt it was advisable not to make them until he was out of shock.

Q. He was in shock?

A. Yes, and the X-rays were made two or three days later.

Q. Did he lose a lot of blood?

A. Yes, sir.

Q. Later was he X-rayed?

A. He was X-rayed three or four days later and there were multiple linear fractures on the skull.

[fol. 115] Q. You have seen and treated many such fractures of the skull?

A. Quite a few.

Q. The same as this was?

A. No type is exactly alike, but similar to this.

Q. What, in your opinion, caused this fracture there on the skull—in other words, what, in your opinion, was it done with?

A. Oh, some instrument with force.

Q. What kind of instrument would you say?

A. A rather blunt instrument.

Q. A blunt instrument with great force?

A. Yes, sir.

Q. Doctor, examine this tire tool I have here and state whether, in your opinion, from past experience in treating patients, and from examining the wounds on Mr. Wright's head, state whether or not that wound could have been inflicted by an instrument like that?

Defendant objects because it is not connected with relation to the defendant, it invades the province of the jury, and is illegal, irrelevant, and incompetent. Objection overruled. Defendant excepts.

A. I don't see how you can——

Q. State whether or not it is possible that it could have been done?

Defendant objects because it invades the province of the jury. Objection sustained.

A. Yes, sir, a wound like that could be inflicted with any instrument like this, whether it was iron or wood or anything hard.

Q. What was his mental state when you saw him?

Defendant objects because it is prejudicial, invades the province of the jury, is incompetent, is not related to this case, and is self-serving.

By the Court: Hasn't the doctor stated that he was unconscious.

By Mr. Almon: Yes, sir.

Objection sustained.

Cross-examination.

By Mr. Poellnitz:

Q. Included in your studies was the general study of mental diseases, was it not?

A. Yes, sir.

Q. You don't specialize in any particular medicine—you have a general practice?

A. Principally gynecology.

[fol. 116] Q. You are familiar with dementia praecox?

A. Yes, sir.

Q. Is that a mental disease?

A. Yes, sir.

Q. You are familiar with Schizophrenics?

A. Yes, sir.

Q. And that is also a mental disease?

State objects because there is no evidence before the Jury yet about any mental disease.

By Mr. Poellnitz: We can call the doctor back later, but I thought we could save time by doing it now.

By the Court: Mr. Soliciter, what you say is true, but it is just a matter of bringing the doctor back. Objection overruled.

A. Yes, sir.

Q. You were appointed on a Commission here in Colbert County to investigate the mental condition of Jesse Blackburn in 1948, weren't you?

The State objects because that particular commission is not admissible in evidence, a report is immaterial and it is not proper at this time.

By Mr. Poellnitz: It is proper cross-examination.

By Mr. Almon: We don't object to him asking about the mental condition of Clyde Wright, but this is foreign to the case.

By Mr. Poellnitz: It is competent on cross-examination. If the doctor has knowledge about Jesse Blackburn, we have a right to ask it. If we have to call him back, that is, of course, an inconvenience to the doctor.

By the Court: Are you going to be in town today, doctor?

By the Doctor: As far as I know, I will.

Objection overruled.

Q. You were appointed on that Commission?

A. No, sir.

Q. You didn't serve with Dr. Trapp and others?

A. I have no recollection of ever serving on any such Commission.

Q. You don't have any recollection of recommending to the Court that this man be sent to the insane hospital?

A. No, I have never seen the defendant before that I have any recollection.

Q. There is another Dr. Gary in Tuscumbia?

A. Yes, sir.

Q. Dr. Robert Gary?

A. Yes, sir.

[fol. 117] The States Rests

Case Is With the Defendant

The defendant moves at this time that the State's evidence be excluded on the grounds that a case has not been made against this defendant, that the corpus delicti, aside from the statement admitted in evidence, has not been proven. The State has attempted to show by circumstances this defendant's connection with an alleged crime, the circumstances haven't put this defendant at the place or near the place of the crime or anywhere in the vicinity of the crime at the time the offense was committed; the State has introduced a confession after evidence was submitted that the confession was involuntary, and that the defendant did not have the mental capacity to testify as a witness at the time the alleged statement was taken; the elements of the crime charged against the defendant, the crime of robbery, have not been proven either by circumstances or by direct evidence; the corpus delicti has not been made out by the State, and the State has failed to make a case against this defendant.

The Court overrules the motion. The defendant excepts.

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[fol. 118] Thomas J. Grace, a witness for the Defendant, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Poellnitz:

Q. State your name for the Jury, please.
A. Thomas J. Grace.
Q. Where do you live?
A. I live in Tuscaloosa, Alabama.
Q. What is your job?
A. I am a Field Examiner for the Office of the Regional Attorney of the Veterans Administration of Birmingham.
Q. Is the Veterans Administration an agency of the United States Government?
A. Yes, sir.
Q. Mr. Grace, you have been requested by subpoena to

produce at this trial the records concerning one Jesse Blackburn, in the custody of the Veterans Administration concerning the defendant, Jesse Blackburn, do you have such records with you?

A. Yes, sir.

Q. And is your agency, the Veterans Administration, the duly authorized Custodian of those records?

A. Yes, sir.

Q. And are the records kept in your Office in Montgomery, Alabama?

A. Yes, sir.

Q. You were commissioned to bring them to this Court, is that correct?

A. That's correct.

Q. And does the record that you have with you contain the entire record insofar as the defendant, Jesse Blackburn, is concerned?

The State objects because there has been no evidence here that this man would know whether or not that is his entire record; it would be hearsay. Objection overruled.

A. Yes, sir.

Q. Jesse Blackburn is shown in your records as a veteran, is he not?

The State objects because it is immaterial and would be hearsay.

By Mr. Poellnitz: He wouldn't have the record if he wasn't a veteran.

By Mr. Almon: It is immaterial whether he served in the Army, Navy or Marines.

Objection sustained. Defendant excepts.

[fol. 119] Q. Does your record contain information about the mental competency of the defendant, Jesse Blackburn?

The State objects because it calls for a conclusion, illegal testimony, and hearsay evidence, and this witness is not qualified to give that evidence at this time.

By the Court: I will reserve the ruling and ask for the record—if the record you speak of is a record that was made in the regular course of business that is carried on by the Agency that you represent at the Veterans Administration Hospital in Tuscaloosa, Alabama?

A. Yes, sir.

Q. They are made in the regular course of business day by day?

A. Yes, sir.

Q. And are regular entries?

A. Yes, sir.

Objection overruled.

The State objects on the further grounds that this man doesn't know what is the regular course of business; he is Field Examiner of the Attorney's Division.

By Mr. Poellnitz: I will ask about that.

By the Witness: I want to make a correction. These are not records of the hospital; these are records of the Regional Office—the hospital is run by one branch of the Veterans Administration and the Regional Office by another.

By Mr. Poellnitz:

Q. They are regular records in the Regional Office and records are kept on all veterans under its supervision?

The State objects because it is illegal, irrelevant, incompetent, and immaterial. Objection overruled.

Q. Is that right?

A. Yes, sir.

By the Court: I see there will be a lot of objections. In the case of *Hall* v. *State*, 248 Ala. 33, the Court held in that case, gentlemen, that upon the records being identified, charts, etc., that they were admissible and that it was reversible error to refuse the admissibility of same.

By Mr. Hollingsworth: We concur; that's a true statement of the law, but from this witness' testimony, this is not a record of the hospital, but his particular office, and it is not the best evidence.

By the Court: He said his office was the record keeping division of the Veterans Administration.

[fol. 120] By Mr. Hollingsworth: May this be off the record?

By the Court: No, I want it in the record.

By Mr. Poellnitz: I can ask some questions about that.

Q. Your Agency of the Veterans Administration, as a part of their function, keeps records, entries and memorandums about veterans and their medical reports on such veterans, do they not?

The State objects because an agent can never testify about his agency.

Objection overruled.

A. Yes, sir.

Q. And the records you have with you contain the medical reports that are the official medical reports concerning this defendant, Jesse Blackburn, do they not?

A. Yes, sir.

Q. I will ask you to refer to the records you have and first say whether or not such records pertain to the mental competency of the defendant, Jesse Blackburn?

The State objects because it is not shown that this witness' memory needs refreshing and this is his witness on direct examination.

Objection overruled.

A. Yes, sir.

The State further objects because it is not shown that these records are sworn to under sanctity of oath and the doctor's evidence would be the best evidence.

By the Court: To clarify the situation, I give you Code Section 415, Title 7. I would like to point out to you that the Legislature in recent years amended Section 415 of Title 7, and Section 415 provides that 'any writing on record, whether in the form of an entry in a book or otherwise, made as a memorandum, or record of any act, transaction, occurrence or event, if it was made in the regular course of any business, and it was in the regular course of the business to make such memorandum or record at the time of such act, transaction, occurrence, or event, or within a reasonable time thereafter' shall be admissible.

By Mr. Almon: We agree on that, but we would like to ask the gentleman some questions on voir dire; it is our contention that he didn't make them.

By the Court: I have asked and he said they were made in the regular course of the business, but we will give you the opportunity to ask him questions on voir dire. I just wanted to point out that the last act of the Legislature provided that it applies to a profession as well as a business.

[fol. 121] By Mr. Hollingsworth:

Q. Do you know who made the entries?

A. They were made in a great many places, some in the hospital in Danville, Illinois, some were made in the Mount Vernon Hospital——

Q. Is that based on what you heard?

A. That's what I have in my hand.

Q. Were you in Danville, Illinois when the records were made?

A. No, sir.

Q. When was the first time you saw the records in this case?

A. It was either Friday or Saturday, the 17th or 18th of April, 1953.

Q. Prior to that time did you know what the records consisted of?

A. No, sir.

Q. Do you know what time in the defendant's life the records began?

A. I could look at the record and tell you.

Q. I mean of your own knowledge, do you know?

A. No, I don't know.

Q. Do you know the persons who made the records and entries?

A. Not all, I know some of them.

Q. Do you know of your own knowledge whether or not these individual entries are correct?

Defendant objects because that is not the test.

By the Court: The Court overrules the objection and gives you this other part of the Code Section—'All other circumstances of the making of such writing or record, or of such photostat, photographic or microphotographic plate or film or prints thereof, whether enlarged or not, including lack of personal knowledge by the entrant or maker, may be shown to affect it weight, but they shall not affect its admissibility'. The objection is overruled. Defendant excepts.

Q. Do you know of your own knowledge that these records you hold in your hand are correct?

A. Ask that again.

Q. Do you know of your own personal knowledge whether

vach individual entry on the record that you hold in your hand is true and correct?

A. You have asked me a question I can't answer. I have to assume they are correct, Judge, because they are the record.

The State moves to exclude that because it is not responsive. Objection sustained.

By the Court: If you don't know of your own knowledge, [fol. 122] the answer would be no.

A. Well, no.

By Mr. Hollingsworth:

Q. Do you know whether or not of your own personal knowledge there are mistakes that appear in these records?

A. I do not.

By Mr. Poellnitz:

Q. Do the records that you have in your hand contain the records of the United States Army that pertain to this veteran?

A. They contain some records that pertain to this veterans.

Q. Do you have the record dated in 1944 pertaining to the discharge of this man from the United States Army?

A. Yes.

Q. Does that also pertain to the mental condition of the man at the time?

A. Yes, sir.

The State moves to exclude that—what kind of discharge he got doesn't have anything to do with it, the time is too remote.

By the Court: Anytime in the life time of the man on a plea of insanity is admissible; objection overruled.

Q. Would you tell the Court what that document bears that we refer to—the date?

A. July 1, 1944.

Q. What is the title of the document?

A. Certificate of Disability for Discharge.

Q. And does that document pertain to the mental disability of the defendant at the time of discharge?

A. Yes, sir.

The State objects on the same grounds. Objection overruled.

Q. And is that document a part of the official records you keep in your office?

A. Yes, sir.

Defendant offers in evidence at this time a certificate of disability for discharge, dated July 1, 1944, pertaining to the defendant, Jesse Blackburn, as Exhibit "A", and ask this witness to read the certificate as shown by his official record.

The State objects to his reading it because the certificate is the best evidence.

By the Court: Objection overruled, he is offering it and it is just the matter of reading it.

[fol. 123] By Mr. Poellnitz: And we might save time by asking leave of the Court to substitute a copy.

By Mr. Almon: To save time we will let him go on with the direct examination, but we don't want to take up the Jury's time of looking at them now, and we can cross-examine him later on it.

By Mr. Poellnitz: They can look at them any time.

By the Court: I think, considering everything, gentlemen, we will save time if you all will just look at it now.

By Mr. Almon: We will examine it and talk to the gentleman at the lunch hour.

By the Court: I was hoping we would get through before the noon hour.

DEFENDANT'S EXHIBIT "A"

Certificate of Disability for Discharge (See AR 600-500 and AR 615-360) (Last name) Blackburn, (First name) Jesse (Middle initial) none (Army serial number) 36792861 (x) A.U.S. ( ) Regular Army ( ) Regular Army Reserve ( ) National Guard ( ) Enlisted Reserve (Grade) Pvt. (Reg. or armor service) Engineers (Date Ind. or current enl.) 2 Sept. 1943 (Civilian occupation) Laborer Prior service (Total years and months) None (Date of birth) 23 Sept. 23 (Height) 5' (Ft.) 8" (In.) (Weight) 161½ (Color eyes) Brown (Color hair) Black (Race) Col. Last discharged ——.

Recommended for discharge on account of (State nature

of disability) 1. Psychosis, 2, Fracture, simple. Became unfit for duty from present disease or injury (Day) 1. 1 (Month) July (Year) 1944. 2. 12 June 1944. Disease contracted or injury received (Date and place) 1. Unknown. 2. 12 June 1944, Avon Park, AAF, Florida. When disability arose soldier was (State duty and service) Cook. Absent from company (State cause and date) 1. Not Absent. 2. Drove G. I. Truck illegally 12 June 1944. Cause of disease, or circumstances under which it appeared:

1. Recurrent periods of marked confusion and overactivity.

2. Overturned while driving G. I. truck without proper authority.

Disability was /xxx No. 2, No AW 107 incurred in line of duty, for No. 1.

AAF Reg. Sta. Hosp., Det. of Patients, Drew Field, Tampa, Florida. 25 August, 1944.

Eugene A. Hilty, 1st Lt., M. A. C., Assistant Commanding Officer.

[fol. 124] REPORT OF BOARD OF MEDICAL OFFICERS

From a careful consideration of all the evidence obtainable in the case and a critical examination of the soldier (see sec. I., Cir. No. 146, W. D., 1941), (for line of duty see par. 18, AR 40-1025) we find that he is unfit for service as a soldier because of:

Recurrent periods of marked confusion and overactivity, assaultiveness with catatonic posturing, teeth grinding followed by severe headache and complete amnesia concerning his behaviour. Constitutes a severe threat to others when subject to such attacks. Between such attack of disorders, is pleasant, agreeable, easy to care for. Diagnoses: 1. Psychosis due to convulsive disorders—epileptic clouded state. 2. Fracture, simple complete, left navicular bone, accidentally incurred when patient while driving G. I. vehicle without proper authority, overturned at Avon Park, AAF, Fla., 12 June 1944. Maximum hospital benefit has not been attained.

Following statements apply to diagnosis No. 1:

That the disqualifying disability was/xxxx incurred in active service.

That the injury or disease xxx/ did not* exist prior to xxx/ induction*.

That the injury or disease xxx/ was not* aggravated by active service.

That the disability xxx/ was not* due to his own misconduct.

That the disability was/xxx* in line of duty.

We therefore recommend that the soldier be discharged For disability in/xxx* line of duty and xxx/ not due* to his own misconduct. Length of time case has been under observation of one or more members of Board: 35 days.

The soldier xxx/ did not* decline treatment for the relief of disability.

President of Board C. S. Stone (Grade) Major, M. C., (Name) C. L. Bennett (Grade) Capt., M. C., (Name) Dennison Young (grade) Capt., M. C.

Origin of disability is known for 2, unknown for No. 1. Disability is considered permanent.

"The Board recommends that patient be transferred to a Veterans Administration Facility for further treatment." Incl. No. 1.

W. D., A. G. O. Form No. 40, 21 August 1943.

" This form supersedes W. D. A. G. O. Form No. 40, 1 January 1943, which will not be used after receipt of this revision. 16-36770-1.

By Mr. Poellnitz:

Q. Mr. Grace, does that record show that the defendant, Jesse Blackburn, was discharged from the U. S. Army because of a mental disability?

A. Yes, sir.

[fol. 125] Q. Will you read the part of the record pertaining to that?

By Mr. Almon: I would like for him to read it all; we

*Strike out words not applicable.

have no objection to the document, of his reading it all, but to save time, it is agreeable if he reads only parts of it.

By Mr. Poellnitz:

Q. Read the medical report there.

A. Recurrent periods of marked confusion and overactivity, assaultiveness with catatonic posturing, teeth grinding followed by severe headache and complete amnesia concerning his behaviour. Constitutes a severe threat to others when subject to such attacks. Between such attack of disorders, is pleasant, agreeable, easy to care for. Diagnosis: 1. Psychosis due to convulsive disorders—epileptic clouded state. 2. Fracture, simple complete, left navicular bone, accidentally incurred when patient while driving G. I. vehicle without proper authority overturned at Avon Park, AAF, Fla., 12 June 1944. Maximum hospital benefit has not been attained.

Q. What is the date?

A. Diagnosis No. 1 was July 1, 1944, and Diagnosis No. 2 was June 12, 1944.

Q. Read the recommendation of the Board?

A. "The Board recommends that patient be transferred to a Veterans Administration Facility for further treatment."

Q. Who is the report signed by?

A. C. S. Stone, President of the Board, Major, Medical Corps; C. L. Bennett, Captain, Medical Corps; and Dennison Young, Captain, Medical Corps.

Q. Read the origin or disability.

A. Origin of disability is known for 2, unknown for No. 1. Disability is considered permanent.

Q. And that report was made in 1944?

A. Yes, sir.

Q. And that is the official certificate of discharge of the defendant, Jesse Blackburn?

A. Yes, sir.

Q. Will you turn in your file to the medical report made following and subsequent to the discharge by the Veteran Hospital authorities at Danville, Illinois?

A. Yes, I have it.

Q. What is the date of that report?
A. September 11, 1944.
Q. Now, you are referring to the report dated September 11, 1944, what is the title of it?
[fol. 126] A. Neuropsychiatric Examination.
Q. That report likewise is part of your official record?
A. Yes, sir.

The defendant introduces the report dated September 11, 1944 in evidence as Exhibit "B", and will ask Mr. Grace to read that report to the Jury.

DEFENDANT'S EXHIBIT "B"

Veterans Administration
Medical Form 2614d-2

Neuropsychiatric Examination

Veterans Administration
Danville, Illinois
September 11, 1944

MLM

Preliminary Report

Blackburn, Jesse ASN 36,792,861

History: This patient was admitted here on September 8, 1944 from Drew Field, Tampa, Florida, with diagnosis of dementia praecox, simple type. Family and previous personal history is negative. While at Avon Park Army air field before present psychotic episode, patient fractured the navicular bone in his left wrist. During his treatment he became noisy, boisterous, talkative, showed pressure of speech and shouted that he was about to walk on the water. He was given sedation and transferred to Drew Field hospital. On admission there, he was excited, confused, talked incessantly, and was hallucinated in both the visual and auditory fields. While in the hospital, he had periods of trance-like immobility in which he would stand in a corner of his room, rigidly, drooling salive, clenching his hands spasmodically, unapproachable, entirely out of contact with his surroundings, making animal-like sounds in his throat and becoming viciously assaultive with biting and kicking whenever an attempt was made to

get him back to bed. Insight and judgment were defective.

Physical Examination: Negative except for multiple superficial scars and residuals of fracture, left navicular bone.

Neurological Examination: Negative.

Mental Examination: Patient is pleasant and affable. He is somewhat pompous in his attitude. However, he answers questions relevantly and coherently. He is not evasive or circumstantial. He claims that he does not remember any of his acts while hospitalized in Florida. At the present time he is in good contact, shows no push of activity and sensorium is clear. He does not appear to be overactive. His behavior on the ward has been good. He has shown no combativeness or antagonism. General mental grasp is fair. In-sight and judgment are both defective. [fol. 127] Staff Findings: Patient was staffed on September 11, 1944 and given a diagnosis of (1415) Psychosis, manic depressive, manic phase.

Competency: The veteran's present mental condition does not show conclusively that he is wholly incapable of disbursing the funds he may receive from the Veterans Administration in a reasonably prudent manner, or that in his present mental condition there would appear to be an utter lack of consideration of values or the complete disregard of the veteran's own or his dependents' needs, or that the veteran would wantonly dissipate any funds entrusted to his care. This opinion is rendered in accordance with letter of the Administrator's Office dated March 28, 1944.

(S.) A. D. Workman, Captain, MC, (S.) R. Cancelleri, Captain, MC, JJB, (S.) G. D. Rice, M. D., Chief Medical Officer, Blackburn, Jesse.

Q. Who is that signed by?

A. R. Cancelleri, Captain, Medical Corps; G. D. Rice, M. D., Chief Medical Officer; and A. D. Workman, Captain, Medical Corps.

Q. Will you turn in your records to a further report made by the Danville, Illinois Veterans Hospital for mental diseases—Do you have a further report made by that Hospital?

A. Yes, sir.

Q. What date is that?

A. August 16, 1948.

By Mr. Almon: Wouldn't it save time for us to cross-examine him on the other now?

Q. Will you read the diagnosis——

The defendant introduces that report in evidence as Exhibit "C"—the report dated August 16, 1948.

Q. And does that report show when the man was discharged from the hospital?

A. Yes, sir.

Q. And it was made by what institution?

A. The Veterans Administration Hospital, Danville, Illinois.

Q. Will you read the diagnosis?

A. Schizophrenic reaction, paranoid type.

By Mr. Hollingsworth: Let him read the whole record.

By Mr. Poellnitz: He can read the entire record if he wants to.

By the Court: Go ahead and read it all, Mr. Grace.

[fol. 128] DEFENDANT'S EXHIBIT "C"

Blackburn, Jesse, C 4 322 793

Summary of Hospitalization:

The undersigned examiner did not see this patient at the time of admission, but according to the examination of the admitting officer the veteran was well oriented but emotionally blunted and he blocked. Very little information was obtainable from the veteran himself. The sister who accompanied the patient stated that the veteran was very nervous and at times belligerent. His meager speech was difficult to understand but he denied hallucinations and delusions could not be elicited because of blocking and poor contact.

Shortly after his admission here he was transferred to the continued treatment service where he remained on the disturbed ward. Interviews with the ward surgeon revealed that he was well oriented as to time, place, and person and he expressed delusional ideas with reference to his family particularly his brothers and sisters. He felt

that they were imposing upon him and that they tried to make him do things that were not at all to his liking. For awhile he was threatening and uncooperative on the ward but finally he quieted down and became interested in his surroundings and very helpful in the ward work. It was then possible to discuss his condition and reason for hospitalization. He began to appreciate the fact that it was up to him to help his mother by getting a job and sticking to it. He no longer felt that people particularly his relatives were against him and he denied that any of the personnel in this hospital put obstacles in his path and were against him. During the major part of his stay on the acute ward hydrotherapy was not necessary. Having thus shown spontaneous improvement, hospital privileges were accorded and he accepted to continue his work in the ward clothing room. His judgment improved and insight was better. Emotional display also became adequate.

On February 14, 1948 he was visited by his sister who requested a ten day leave of absence which was granted. Not having returned from his leave of absence, he was accordingly placed on a 90 day trial visit. On May 24, 1948, expiration of trial visit, he was discharged from this hospital. The diagnosis of schizophrenic reaction, paranoid type remains unchanged, and he was considered incompetent at the time of his release.

[fol. 129] Diagnosis:

Dg. 1 Schizophrenic reaction, paranoid type. Treated. Improved.

Prognosis: Guarded.

Disposition: Discharged expiration of trial visit, May 24, 1948.

This veteran is considered incompetent as defined in R&P R-1173 and 1174.

(S.) T. G. McLin, M. D., (S.) M. Prata, M. D., Ass't Chief, Continuous Treatment Service, (S.) Oreon K. Timm, M. D., Chief, Professional Services.

Approved: August 16, 1948. MP:dk.

By Mr. Poellnitz:

Q. Mr. Grace, turn in your records to an additional report made by Dr. Moorer—do you have such report?

A. Yes, sir.

Q. Is that part of your official records?

A. Yes, sir.

Q. It is dated April 22, 1949?

A. Yes, sir.

We offer that report in evidence as Exhibit "D" for the defendant.

Q. Will you refer to that report and give us the diagnosis made at that time by Dr. Moorer?

A. Schizophrenic, reaction, paranoid type, insane, incompetent, and should be placed in an insane hospital.

By Mr. Hollingsworth: We would like to have the other read; we have had the diagnosis, and we would like to have the other.

By the Court: All right.

(The witness read the following report):

DEFENDANT'S EXHIBIT "D"

Neuropsychiatric Examination

Adjudication.

Blackburn, Jesse, C No. 4 322 493

April 22, 1949

History: Questioning of the veteran reveals no hereditary factors to be considered as the cause of the fact in this case. He is a native of the State of Alabama. His father is a farmer of moderate means. He has one brother and three sisters. When quite young he had the usual childhood diseases. Before entering military service he was reared by his parents who were good to him. He [fol. 130] attended grammar school and finished high school. During his school like he was an average pupil who applied himself well enough to keep up with his classes. He was normal in his relations with both boys and girls in school with him. Before entering military service he was in college, as a master mechanic in Chicago, Illinois. He

was paid one per-cent of the work he completed. He was inducted in September, 1943; he completed his basic training at Jefferson Barracks, Missouri, without incident. He was assigned to the Air Corp. He did not go overseas. Theater of Operations was not in combat. He said he did go overseas, before he joined the Army, with the Merchant Marine. He was hospitalized at the Station Hospital at Tampa, Florida, due to an automobile accident, was assigned there for six months, and was transferred to Danville, Illinois. Then to Avon Park Hospital, Florida, for thirty days, for a broken wrist, left arm. He was discharged from the service in September, 1945. Back in his home he did not start back to work right away, but tried several jobs and couldn't keep a job. They would turn him off and he would have to get another one. He denies addiction to alcohol, says he drinks none at all and has no venereal disease.

Present Complaint: "Sometimes I have unconscious spells and do not know anything for awhile. I sometimes have headaches."

Neurological: This is a colored male. He is of good body build, musculature is firm, of good tone, body is symmetrical. He is well nourished. There are no anatomical stigmata. He walks without visible abnormal-ty. Negative Romberg, Pupillary reactions normal. Tongue protrudes in midline, teeth shown, forehead wrinkled normally. All reflexes are normally present, and he replies promptly to touch in all portions of the body, indicating no sensual disturbances. Grip in each hand is good, and there are no tremors of extended fingers. Measurements show no atrophy of muscle, coordination good, position and vibration sense, normal.

Mental: This patient was examined in a jail cell in Mobile County Jail. When I walked into his cell, he was quiet and answered questions readily. Reacted normally during the examination. He showed no tendency to evade, and did not appear suspicious. He gave attention, was courteous, spoke in a moderate tone of voice, showed no irrelevance or elation but seemed somewhat depressed during the conversation, especially when he answered questions and was waiting for another question. He showed good memory,

both for remote and recent occurrences. Close question-
[fol. 131] ing of the veteran illicits the following psychotic tendencies. The veteran states that he was in the Danville Hospital, Illinois, November 15, 1945, and then was sent to Bellview Hospital, New York City, for observation for 35 days. He then was transferred to Manhattan at Beeoton, New York. He was transferred, then, to Cook County Hospital, Chicago. After ten days of observation, he was released into the custody of his sister, Elsie Lee Bradford, of Chicago, for ninety days. Before this time was up he was sent back to Danville, Illinois, and stayed there until March, 1947. His mother was sick and he was given a release to go to see her. And while there, his brother was sick and he went to see him. The veteran states that while he was home in Chicago, that one morning he went to bed and when he came to himself, he was thirty miles away from there in another town driving his automobile. He knew he had a pair of coveralls in his car. He put them on and went to the nearest telephone, called up and found out that he was thirty miles away from home. He then turned around and went back to his home. He states that he knew nothing of this at all. The veteran states that every now and then he hears people talking to him; sometimes they are friendly voices, most of the time they are not; some of them telling him that they are going to kill him and he can hear them discussing the different types of punishment they are going to mete out and how they are going to kill him. He claims there are some pleasant voices that tell him to do good things. "These happenings aggravate me," he states, "and they cause me to go into tantrums and do things that I would never think of doing otherwise." The veteran states that when he and two other boys that he picked up in Chicago had driven to Alabama and while there these two boys took his car and rode around and robbed a store. They came back, and he, not knowing anything about it, went on back home, and he found out later that he and these two boys were suspected of having robbed the store. He called up the Sheriff to ask if it were true and he said, "Yes". So, he went down and told them that he had nothing at all to do with it. The other two boys ran away, but he understood that they were

later caught, and placed in jail. The veteran states that he was later sent to the State Hospital in Mount Vernon, and there he was kept for a long time under observation. He heard them say that they were going to give him shock treatment, and as he refused to let them come into his room, he heard them say that several men would be brought in to get him and that he would be given shock treatment anyway. This caused him to run away from the hospital. After being out for several days, so hungry that they [fol. 132] robbed a man; to get food, was the cause of the robbery.

Diagnosis: Schizophrenic, reaction, paranoid type. Insane, incompetent, and should be placed in insane hospital.

(S.) M. L. Moore, M. D., Neuropsychiatrist, (S.) P. Dan Hudson, M. D., Assistant Chief Medical Officer, Chief, Surgical Staff.

By Mr. Poellnitz:

Q. The reports you have read are parts of the record that you have in your hand?

A. Yes, sir.

Q. The records show that this man is mentally incompetent, do they not?

A. Yes, sir.

Q. He is one hundred percent disabled?

The State objects because the record is the best evidence. Objection sustained.

By Mr. Hollingsworth: Since we have gone into this, it is perfectly agreeable for the attorney to introduce any part of the record or all of it without any objection.

By Mr. Poellnitz: I was trying to save time.

Q. Mr. Grace, you are now referring to what is known as Rating Sheet?

A. Yes, sir.

Q. That's part of your official record?

A. Yes, sir.

Q. What id the date of that?

A. September 13, 1948.

Q. Does that show the rating given this veteran by your agency?

A. Yes, sir.

Q. Does the rating show the date of such rating?
A. Yes, sir.
Q. What is that date?
A. Fifty per cent from——
The State objects unless this witness tells the Court and Jury what this rating is.
A. That's what I am preparing to do—Suppose I read the whole thing.

[fol. 133] By Mr. Poellnitz:

Q. Start reading the Rating—don't bother to read the heading and numbers.
A. The above indicated hospital report shows the veteran was discharged from a ninety day trial visit on 5-24-48 and was considered incompetent. The social service report of 7-1-48 shows he is not adjusted as he was being held in jail in Alabama.
Rating dated 1-29-47 is amended as follows:
A. Incurred WW II VR 1 (a) Pt I Par. I(a).
50% from 9-9-44 to 3-31-46.
50% from 4-1-46 to 11-21-46.
100% from 11-22-46.
9005 Schizophrenic reaction, paranoid type—incompetent from 5-24-48.
Considered under Inst 3, Pub No. 458, 79th Cong. (2507—2-14-49). No combat.
Veteran was represented by the ARC.
Q. That is the official finding as to the man's mental competency?
A. Yes, sir.
We introduce the report referred to as the rating sheet as Defendant's Exhibit "E", and ask that a photostatic copy be substituted. (No objections.)

DEFENDANT'S EXHIBIT "E"

Rating Sheet

Instructions—If stencil is not used to fill in information in caption, then type only those items which are unshaded.
Name Blackburn, Jesse, Service Serial No. C. No. 4322493, Date of Rating September 13, 1948 typed, 9-14-8 nk Ad-

dress 451 E. 55th St. City Chicago, State Ill. Date of Claim —— Date of Last Examination HR-VAH Danville, Ill., 12-28-47 to 5-24-48. Occupational Determination (if required) Type Disch. Hon. Active Duty Date 9-2-43; Date R. A. D. 9-8-44.

Ratings

The above indicated hospital report shows the veteran was discharged from a ninety day trial visit on 5-24-48 and was considered incompetent. The social service report of 7-1-48 shows he is not adjusted as he was being held in jail in Alabama.

Rating dated 1-29-47 is amended as follows:

A. Incurred WW II VR 1(a) Pt I Par I(a).
50% from 9-9-44 to 3-31-46.
50% from 4-1-46 to 11-21-46.
100% from 11-22-46.

[fol. 134] 9005 Schizophrenic reaction, paranoid type—incomplete from 5-24-48.

Considered under Inst. 3, Pub No. 458, 79th Cong. (2507—2-14-49). No combat.

Veteran was represented by the ARC.

Rating Specialist (Medical) (S.) M. O. Grossman, MD, Rating Specialist (Claims) (S.) W. H. Warnock, Rating Specialist (Occupational) (S.) T. B. Ziegler, Rating Board No. 8IC Veterans Administration 3028 Chicago.

VA Form 8-564 Dec. 1946 Supercedes VA Form 7625, Jun 1946, Test Form, and previous editions of 564 which may NOT be used.

Cross-examination.

By Mr. Hollingsworth:

Q. Now, will you turn back to Exhibit "E", please.
A. Yes, sir, I have it.
Q. Where was it—the basis for this Exhibit, where was the defendant at that time, in what institution or hospital?

A. Let me read part of the paragraph—"The social service report of 7-1-48 shows he is not adjusted as he was being held in jail in Alabama"—where he was on the date this was made, I do not know.

Q. I will ask you whether or not it says this incompetency was from the 24th day of May, 1948—does that appear on that Exhibit "E"?

A. Yes, sir.

Q. Now, I would like for you to refer to Exhibit "D".

A. Yes, sir.

Q. Now, is it not true that in Exhibit "D", it states the defendant went to high school and then on to college?

A. What was the question?

Q. I asked if in the report signed by Dr. M. L. Moorer, Exhibit "D", whether or not it said in the Exhibit that the defendant went to high school and on to college?

A. Yes, sir.

Defendant objects because that has already been read to the Jury; it is asked just to emphasize it.

By Mr. Hollingsworth: We have a right to cross-examine him and emphasize it.

By the Court: To save time, the objection is sustained. [fol. 135] By Mr. Hollingsworth: Are you not going to allow us to go back over this and ask questions we think favorable to the State?

By the Court: No, my ruling is that I think it is a waste of time to go back over and read the part already read.

By Mr. Hollingsworth: I just asked if it was in there, not for him to read it.

By the Court: You can make a note and argue it to the Jury, but it is repetition here.

By Mr. Hollingsworth: Cross-examination is always repetition.

Q. We will go on to Exhibit "C"——

A. I have the place, go ahead.

Q. Now, down here it says, "This veteran is considered incompetent as defined in R&P R-1173 and 1174"——

A. R&P means Regulations and Procedure and those numbers refer to the paragraphs under which the veteran was considered incompetent.

Q. Do you know of your own knowledge what is stated in those paragraphs?

A. No, sir.

Q. I would like to refer now to Exhibit "B"—I will ask you whether or not it was stated in that Exhibit that he answered the questions clearly?

The defendant objects to his picking one particular part out of the record—of a record that has already been read to the Jury in its entirety; it is prejudicial. Objection overruled. Defendant excepts.

A. Yes, sir, it is in that paragraph.

Q. I will ask you whether or not that Exhibit states that the Veterans Administration—that they would not say that he was incapable of disbursing his own funds?

A. That's correct.

Q. And I will ask if it is not stated in that Exhibit that they said he was pleasant?

A. Yes, sir.

Q. From your records do you have a showing as to what hospital the defendant was last in prior to April 19, 1948?

A. That would take some looking; I will have to look that up. (The witness looks through the records, then answers): He was in Danville, Illinois.

Q. Does it show what time he was committed to Danville, Illinois?

A. I will have to read and see. He was admitted December 28, 1947.

Q. When was he discharged?

A. May 24, 1948.

[fol. 136] Q. On February 14, 1948, I will ask you from the record whether or not his sister visited him while he was at this hospital?

A. Yes, sir.

Q. I will ask you whether or not at that time and place it was requested that he be given a leave of absence?

A. Yes, sir.

Q. And I will ask you whether or not at that time and place he was placed on a ninety-day trial visit and permitted to leave the hospital?

A. Yes, sir.

Q. What date was that?

A. I will read—"On February 14, 1948 he was visited by his sister who requested a ten day leave of absence which was granted. Not having returneed from this leave

of absence, he was accordingly placed on a 90 day trial visit. On May 24, 1948, expiration of trial visit, he was discharged from this hospital. The diagnosis of schizophrenic reaction, paranoid type remains unchanged, and he was considered incompetent at the time of his release".

Q. You tell the Jury, according to the report, that at the time he was allowed to come home on this visit he was incompetent at that time?

A. The record shows that.

Q. He never returned to the hospital and was discharged as of May 24, 1948?

A. Yes, sir.

Redirect examination.

By Mr. Poellnitz:

Q. To get the record straight, you were still referring to the reports you read to the Jury?

A. Yes, sir.

Q. And particular parts of those reports?

A. Yes, sir, parts on the last; I didn't read that entire report then.

Q. When they show the admission of Jesse Blackburn to the hospital in Danville, Illinois, on that particular occasion, that does not affect the admission you showed by Exhibit "A" to the Danville Hospital—In other words, he had been admitted before that report on another occasion?

A. Yes, sir.

Q. It was shown that he was sent to the Danville Hospital?

A. Yes, sir.

Q. In 1944?

A. Yes, sir.

[fol. 137] Q. And you have a record Exhibit "A" showing he was admitted to the Danville Hospital in September, 1944?

A. I believe that's Exhibit "B".

Q. They asked about the report of May 24, 1948; that was the official discharge of the defendant?

A. Yes, sir.

Q. It shows that he wasn't in that Hospital at that time?

A. Yes, sir.

Q. It shows that he was on a trial visit?

A. Yes, sir.

Q. Explain the trial visit?

A. The Veterans Administration Hospital has a policy of sending mentally incompetent veterans back home to familiar surroundings on a trial visit to see if they are able to adjust themselves and stay at home. On many occasions they are able to stay at home and not bring them back at the end of ninety days, that can be extended, and he is then discharged without coming back to the Hospital.

Q. If he is able to stay at home and adjust himself to the surroundings, he is permitted to stay at home?

A. Yes, sir.

Q. Otherwise, he is brought back to the Hospital?

A. That's correct.

Re-cross-examination.

By Mr. Hollingsworth:

Q. Does your record show that Jesse Blackburn married Fannie Rogers on the 15th of April, 1948, while at home on that trial visit in Iuka, Mississippi?

A. There is in the record a certified copy of a Certificate of Marriage in Tishomingo County, Mississippi, between Fannie Rogers and Jesse Blackburn on April 15, 1948.

Q. That's while he was home on a trial visit?

A. Yes, sir.

Q. Is that signed by a person named Wilson?

A. Yes, sir.

Q. And it has the seal on it?

A. It has the seal of the Circuit Court of Tishomingo County, Mississippi.

Q. That is a certified certificate of marriage?

A. Yes, sir.

[fol. 138] The defendant introduces the depositions of Dr. Rowe and Dr. Tarwater.

By the Court: By agreement, the defendant introduces in evidence at this point the depositions of Dr. Tarwater and Dr. Rowe, and the State introduces in evidence the deposition of Dr. Richards.

By Mr. Almon: No, the State introduces the cross-interrogatories to Dr. Tarwater and Dr. Rowe.

By the Court: The cross-interrogatories are in the deposition. Will one get on the stand and read the answers and the other read the questions.

(At this point, the jury is excused and leaves the court-room.)

(The following objection was made without the presence of the Jury):

On said deposition the State objects to the admission in evidence and reading before the jury the order of the Circuit Judge which first transferred the defendant to the Alabama State Hospitals for observation and report on the grounds that it is illegal, immaterial, incompetent, hearsay, and not the best evidence, and sheds no light on the issue in this case as to whether the defendant was sane or insane at the time of the commission of the alleged offense for which he is charged, and on the further ground that said instrument in writing is not under oath.

The Court sustains the objection to the admission in evidence and reading before the jury the entire order of the Court committing the defendant for observation and treatment, but states to the attorneys in open court that the bare fact that the defendant was committed may be admitted in evidence, and so stated before the jury and as the Court understands it, such questions are incorporated in the depositions otherwise.

The defendant reserves an exception to the ruling of the Court in not allowing the whole of said order to be received in evidence and read to the jury as attached to the deposition.

The State also objects on the same grounds heretofore assigned to the receipt in evidence and reading before the jury of the trial court's order permanently committing the defendant to the Alabama State Hospitals until restored to his right mind.

The Court sustains said objection and likewise in this instance states to the defense in open court that the bare fact that the defendant was so permanently committed may be introduced in evidence and stated before the jury and

[fol. 139] if said bare fact is not shown by the depositions themselves, the attorneys are privileged to so state that fact to the jury, but the whole of said commitment is not admitted in evidence, and to these rulings of the Court the defendant reserves an exception. The Court, however, has made it clear to defense counsel in open court that the actual report of the Sanity Commission referred to as Exhibit "B" in said depositions may be fully and completely received in evidence and read to the jury.

The State objects to the introduction of the report of the Lunacy Commission—Exhibit "B"—on the grounds heretofore assigned.

The Court overruled objection.

(The jury called back into the courtroom.)

By Mr. Poellnitz:

We offer in evidence the deposition of Dr. Harry S. Rowe at this time, the commission by which the deposition was taken, the affidavit to take the deposition and the direct interrogatories and their answers which Dr. Rowe made. The deposition was taken in Mount Vernon, Alabama, and is entitled to the effect as evidence as if Dr. Rowe were present. I intend to read the interrogatories and get my partner to read the answers.

By Mr. Almon: Didn't we introduce the cross-interrogatories too in the agreement?

By the Court: Later on you can introduce them and read them to the jury.

STATE OF ALABAMA,
Colbert County, Circuit Court.

To Hon. John R. Higgins, of Mobile, Alabama, Greeting:

Know Ye, that we, reposing confidence in your integrity, skill, and ability, have appointed you Commissioner to take the testimony of Dr. Harry S. Rowe, a material witness for the defendant in the causes now pending in the Circuit Court of Colbert County, Alabama, brought by the State of Alabama under indictments against Jesse Blackburn, as defendant, and we hereby authorize and empower you to call and cause to come before you Dr. Harry S. Rowe, the said

witness and his deposition on oath to take as well for the state as for the defendant touching his knowledge of the matters and things in controversy in said causes, which deposition, when so taken shall be signed by said witness [fol. 140] and certified by you as Commissioner acting herein; and you are further commanded, the deposition, when so taken with this commission to return under your hand and seal to the Clerk of said Court with all convenient speed.

Witness my hand this, the 15 day of April, 1953.

(S.) Mrs. W. Lee Stanley, Clerk.

STATE OF ALABAMA,
Colbert, County, in the Circuit Court of Colbert County, Alabama.

Case No. 8521 and Case No. 8522

STATE OF ALABAMA *vs.* JESSE BLACKBURN

AFFIDAVIT TO TAKE DEPOSITION

Before me, Leo Berryman, Jr., a Notary Public, in and for said State and County, personally appeared Jesse Blackburn, who, being by me first duly sworn, deposes and says:

That he is the defendant in the above styled cases; that he desires to take the deposition of Dr. Harry S. Rowe who resides more than 100 miles from Tuscumbia, Alabama, the place where the above causes are set for trial, computed by the route usually travelled; and that the testimony of said witness is material for the defendant in the defense of this cause and his evidence to be secured by this deposition will be material evidence for the defendant on the trial of these causes and that said witness resides at Mt. Vernon in the County of Mobile, Alabama, and that the defense, or a material part thereof, depends exclusively on the testimony of the said witness.

This, the 6th day of April, 1953.

(S.) Jesse Blackburn, Defendant.

Sworn to and subscribed before me on this, the 6th day of April, 1953. (S.) Leo Berryman, Jr., Notary Public, State at Large.

[fol. 141] Interrogatories to Dr. Harry S. Rowe

Now comes the defendant and propounds interrogatories to Dr. Harry S. Rowe, a witness whose testimony, when taken, will be material evidence for the defendant on the trial of the above causes.

First Interrogatory

Please state your name, age, address, occupation, and official title.

Answering the first direct interrogatory, he says:

My name is Harry S. Rowe. I am 55 years of age. My address is care of Searcy Hospital, Mt. Vernon, Alabama. I am a physician, and my official title is Assistant Superintendent of the Searcy Hospital, at Mt. Vernon, Alabama.

Second Interrogatory

Please briefly state your qualifications as a physician and your experience and training as such. What field of medicine have you specialized in? Please briefly relate your experience and training in the field of medicine in which you have specialized. How many years have you specialized in the treatment of insane persons and mental diseases? Please state approximately how many patients you have seen suffering with mental disorders and diseases during the years of your experience in treating such cases.

Answering the second direct interrogatory, he says:

I graduated from Emory University, in Atlanta, in the medical department, in 1922, as MD. Then I served a rotating internship at the City Hospital in Mobile for one year and since that time I have been connected with the Searcy Hospital as a physician on the staff. I suppose my practice would be mostly general practice, and the patients they have been in the hospital here—all psychopathic patients or supposed to be, so that would be considered a general practice and psychopathist. Actually I have never specialized in anything, but all my work since I finished my internship in 1923, has been with psychoathic patients in the Searcy Hospital in Mt. Vernon. I have been on the staff of the Searcy Hospital at Mt. Vernon since 1923, and the Searcy Hospital is a part of the Alabama State

Hospitals. As to the number of patients that I have seen suffering with mental disorders and diseases during the years of my experience in treating such cases, I would say that presently we have in the hospital here twenty two hundred and about eighty patients. For the past twenty nine years I have probably seen 200 new patients a [fol. 142] year.

Third Interrogatory

Were you in the year 1948 appointed or commissioned by or in pursuance of an order of the Circuit Court of Colbert County, Alabama, to investigate the insanity of one Jesse Blackburn, colored, under indictment for robbery and assault with intent to murder? If so, please state whether or not the attached paper marked Exhibit A to these interrogatories is a true and correct copy of the order under which you made such investigation.

Answering the third direct interrogatory, he says:

Yes, I was so appointed and commissioned. Yes, the paper marked Exhibit A, attached to the interrogatories, is a true and correct copy of the order under which I made such investigation.

Defendant offers Exhibit "A" to interrogatory No. 3, and understand the Court has ruled that we cannot receive that in evidence.

The State objects on the same grounds heretofore assigned.

By the Court: Yes, the objection to Exhibit "A" as being received in evidence is sustained—the paper referred to is dated July 26, 1948 and signed by Judge Robert M. Hill.

By Mr. Poellnitz: I will agree that you made that ruling during a recess between counsel.

Fourth Interrogatory

Please state whether or not you made such investigation of the mental condition of the said Jesse Blackburn in conformity to the order identified as Exhibit A. Please also state the names of the other doctors who acted on such lunacy commission with you. Did you and the other doctors you have named report your findings from such

investigation to the judge of the Circuit Court of Colbert County, Alabama? Was such report dated January 6, 1949, and is the attached paper marked Exhibit B to these interrogatories a true and correct copy of such report?

Answering the fourth direct interrogatory, he says:

Yes, I made such investigation of the mental condition of the said Jesse Blackburn in conformity with the said order. The other doctors who acted on the said commission with me were Dr. J. S. Tarwater, Superintendent of the Alabama State Hospitals, who was at that time Acting Superintendent, and Dr. A. M. Richards, Assistant Physician. Yes, the said Drs. Tarwater and Dr. Richards and I reported our findings from such investigation to the said Judge of the Circuit Court of Colbert County, Alabama. Said report was dated January 6, 1949, and the attached [fol. 143] paper marked Exhibit B to the direct interrogatories, is a true and correct copy of said report.

By Mr. Poellnitz. We ask permission to read to the Jury Exhibit "B" which has been identified by Dr. Rowe, referred to in Interragotory No. 4.

The State objects on the grounds heretofore assigned at the recess in the absence of the Jury, and refiled as to the lunacy report which he is about to read.

Objection overruled.

EXHIBIT "B"

STATE OF ALABAMA,
Mobile County.

To: Honorable Robert H. Hill, Judge of Circuit Court, Colbert County, Tuscumbia, Alabama:

Under the provisions of an Act of the Legislature of Alabama approved April 17, 1933, (Title 15, Section 425, Code of Alabama of 1940), one Jesse Blackburn, colored, indicted for robbery and assault with intent to murder, was admitted to the Searcy Hospital on July 29, 1948 under order of Honorable Robert H. Hill, Judge of Circuit Court, Colbert County, Alabama, Tuscumbia, Alabama, for observation and report as provided in the Act referred to above.

In compliance with the provisions of the Act, the Superintendent of the hospital appointed Doctor H. S. Rowe, As-

sistant Superintendent and Doctor A. M. Richards, Assistant Physician, who associated with the Superintendent constitute the undersigned commission. After having the said Jesse Blackburn under our study and observation continually since the above date of admission we desire to submit the following report:

It is the opinion of each of us, and our opinion jointly and collectively, that the said, Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948 was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged.

Under the provisions of the act referred to above, we understand that with the rendering of this report our obligation and that of the Searcy Hospital, one of the Alabama State Hospitals, has been discharged and that if it is the wish of the court that the said, Jesse Blackburn be detained longer in this institution as a patient, it would be necessary for this court or some court of jurisdiction to issue a commitment or order for the further detention of the said, Jesse Blackburn in the Searcy Hospital.

Awaiting your further order or that of the Court or the Sheriff of Colbert County.

Respectfully submitted,

Signed and executed this 6th day of January 1949 at the Searcy Hospital, Mt. Vernon, Alabama.

(S.)J. S. Tarwater, M. D., Acting Superintendent, (S.) Harry S. Rowe, M. D., Assistant Superintendent, (S.) A. M. Richards, M. D., Assistant Physician.

[fol. 144] Fifth Interrogatory

Did you and the other doctors associated with you find as stated in said report: "From a study of his case and using information from several other mental hospitals

where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged.''? Did this part of your report relate to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of your said report?

Answering the fifth direct interrogatory, the witness says:

In that report we (the three doctors mentioned in and who signed said report) stated in that report, ''From a study of his case and using information from several other mental hospitals where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged.''. Yes, that part of our report related to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of the making of our said report.

Sixth Interrogatory

Subsequent to your report of January 6, 1949, was there an order made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind? If so, please state whether or not the attached paper marked Exhibit C is a true and correct copy of said commitment order dated December 27, 1949. Please state whether or not Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29, 1948, and whether his commitment continued to October 7, 1952.

Answering the sixth direct interrogatory, the witness says:

Yes, subsequently to our report of January 6, 1949, such an order was made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind. Yes, the paper marked Exhibit C and attached to

the interrogatories, is a true and correct copy of said commitment order dated December 27, 1949. Yes, the said Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29, 1949, and his commitment continued to October 7, 1952.

[fol. 145] Defendant offers Exhibit "C" in evidence, and understands the Court has ruled on it during a recess between counsel, but for the purpose of the record, we would like to have it ruled on at this time.

The State objects on the same grounds heretofore assigned.

The Court sustains the objection to the admission in evidence of the order itself referred to.

Defendant excepts.

Seventh Interrogatory

Please state all the pertinent additional facts and further information and opinions relating to the mental condition of Jesse Blackburn during the month of April, 1948, and during the period from January 1, 1948 to July 29, 1948.

Answering the seventh direct interrogatory, he says:

Jesse Blackburn was committed to the hospital here on July 29, 1948 from Colbert County, Alabama, as a criminal patient, and the permanent commitment was dated the 27th day of December, 1949, and it was signed by the Circuit Judge, Hon. Robert M. Hill. Jesse Blackburn was held under that commitment from that date until November 12, 1952, at which time he was discharged from the hospital and was dismissed and given into the custody of the officers from Colbert County, Alabama. The Commission kept Jesse Blackburn under observation continually from July 29th 1948, and he was observed during psycopathic episodes, and the commission, having had a history of his having been hospitalized previously, the Commission was of the opinion—all of us, individually and collectively—that he was most probably mentally incompetent and insane at the time of the commission of the crime for which he was charged. While in the hospital he would show an abnormal behavior at times, and at other times he would be apparently normal. And for several months prior to the time he was released from this institution into the

custody of the Colbert County officials, he had been cooperative, talked and acted fairly rationally, and his behavior was what could be considered practically normal, and the Court was notified that he could be released, and at that time it was our opinion that he was mentally competent. After getting in all of the laboratory reports and having him under observation for a long period of time, and noting his behavior and at times his peculiarities in general, it was clear that he was suffering from schizophrenia of the paranoic type. They undergo personality changes and they do exhibit peculiarities, and they entertain delusions and also exhibit hallucinations—hallucinatory ideas. These [fol. 146] people who are suffering from this condition, are at times rather treacherous, or they are sometimes subject to remissions from the symptoms. It is my opinion that Jesse Blackburn was insane at the time of the commission of the crime for which he was charged, and that at that time he was most probably not capable of distinguishing right from wrong, because of his mental illness.

(The following appeared at the end of the direct interrogatories):

(S.) Mitchell & Poellnitz, Attorneys for Defendant.

The name of John R. Higgins, of Mobile, Alabama, is suggested as a fit and suitable person to take down the answers to the foregoing interrogatories and it is requested that a commission issue to him for that purpose.

(S.) C. A. Poellnitz, Atty.

A copy of the foregoing with exhibits has been personally served on W. L. Almon, Solicitor this 6th day of April, 1953.

(S.) C. A. Poellnitz.

The State introduces the cross-interrogatories propounded to Dr. Harry S. Rowe.

By the Court: Gentlemen, when this deposition was taken, that is, when the testimony was taken in Mount Vernon, Alabama, the State of Alabama has filed some cross-questions or cross-interrogatories to be asked the

witness and they are read at this time—Mr. Almon will read the questions and Mr. Hollingsworth will read the answers.

CROSS-INTERROGATORIES TO DR. HARRY S. ROWE

Now comes the Plaintiff and propounds cross-interrogatories to the defendant's witness, Dr. Harry S. Rowe:

Interrogatory No. I

Dr., please state over what period of time you personally observed Jesse Blackburn.

Answering the first cross-interrogatory, the witness says:

Jesse Blackburn was committed to the Searcy Hospital on July 29th 1948, where he remained until the time of his discharge, except for the period of namely January 24th 1949, when he eloped and returned April 23rd 1949. I had him under observation continually until the time of his discharge, on November 12th 1952.

[fol. 147] Interrogatory No. II

Give the time from the beginning of your observation of Jesse Blackburn and the date he was last seen and observed by you.

Answering the second cross-interrogatory, he says:

He was committed to the hospital. He was released from the hospital to the Colbert County authorities November 12th 1952. During that time he was away from the hospital from January 24th 1949, to April 23rd 1949, he having escaped on the first date mentioned and having returned on the last mentioned date.

Interrogatory No. III

How often did you see Jesse Blackburn and observe him.

Answering the third cross-interrogatory, he says:

I would say probably twice a week on general ward round, but he was observed daily by one of the hospital staff members.

Interrogatory No. IV

How long or how many hours did you see and observe Jesse Blackburn each day you saw him.

Answering the fourth cross-interrogatory, he says:

On many occasions I interviewed him for quite some time, and at other times it was merely seeing him as I passed him on the general ward rounds.

Interrogatory No. V

How long and over what period of time did he exhibit abnormal thinking and abnormal behavior?

Answering the fifth cross-interrogatory, he says:

At intervals during his entire stay in the hospital here he would exhibit abnormal thinking and abnormal behavior; but at other times he would talk and act rationally and seem perfectly normal.

The defendant objects to Interrogatory No. 5 and the answer on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Interrogatory No. VI

Is it not a fact that at times Jesse Blackburn's thinking was normal?

Answering the sixth cross-interrogatory, he says:

Yes, it is a fact.

[fol. 148] The defendant objects to Interrogatory No. 6 and the answer on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Interrogatory No. VII

Is it not a fact that at times Jesse Blackburn's behavior was normal?

Answering the seventh cross-interrogatory, he says:

It is a fact.

The defendant objects to Interrogatory No. 7 and the.

answer on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Interrogatory No. VIII

Is it not a fact that Jesse Blackburn's thinking and also his behavior was more normal than abnormal?

Answering the eighth cross-interrogatory, he says:

Yes, it is a fact that his thinking and also his behavior was more normal than abnormal.

The defendant objects to Interrogatory No. 8 and the answer on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Interrogatory No. IX

Is it not a fact that at times Jesse Blackburn was rational in his thinking?

Answering the ninth cross-interrogatory, he says:

Yes, it is a fact.

The defendant objects to Interrogatory No. 9 and the answer on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Interrogatory No. X

Is it not a fact that at times Jesse Blackburn was rational in his behavior?

Answering the tenth cross-interrogatory, he says:

Yes, it is a fact.

[fol. 149] The defendant objects to Interrogatory No. 10 and the answer on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Interrogatory No. XI

Is it not a fact, Dr. Rowe, from your observation of Jesse Blackburn, that he, at times, had lucid intervals?

Answering the eleventh cross-interrogatory, he says:

Yes, he did.

The defendant objects to Interrogatory No. 11 and the answer on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County, and on the additional ground that it is prejudicial to the defendant; it is not restricted to any time or place.

Objection overruled. Defendant excepts.

Interrogatory No. XII

Is it not a fact that your report in writing dated January 6th, 1949, to Honorable Robert M. Hill, Judge of the Circuit Court, Tuscumbia, Alabama, is based partly upon your observation of Jesse Blackburn, and also partly upon information from several other mental hospitals where he was treated?

Answering the twelfth cross-interrogatory, he says:

That is true.

Interrogatory No. XIII

When did you first see Jesse Blackburn?

Answering the thirteenth cross-interrogatory, he says:

I probably first saw him on his commitment—shortly after his commitment on July 29th 1948, but I did not actually interview him for the record until the first part of August, 1948.

Interrogatory No. XIV

What was his mental condition on April 19, 1948?

Answering the fourteenth cross-interrogatory, he says:

In our report to the Judge of the Circuit Court of Colbert County, Alabama, I did, with the other members of the lunacy commission, give the opinion that Jesse Blackburn was insane on April 19th 1948, because of the fact that we did observe him in the hospital here, and we had his history

of his having been in other hospitals and his being diagnosed as being insane. That is still my opinion today.

[fol. 150] Interrogatory No. XV

What was his mental condition on May the 8th, 1948?

Answering the fifteenth cross-interrogatory, he says:

My opinion is that he was most probably insane and incompetent at that time. There was also a statement in the original commitment that the Judge of the Circuit Court of Colbert County, had a statement from the sheriff and the jailor and three reputable physicians and other credible witnesses that there was reasonable ground to believe that Jesse Blackburn was insane at and about that time.

The State moves to strike that part about the report on the grounds it is hearsay and not responsive.

By the Court: The motion is sustained—that latter part is excluded as not being responsive to the question, that part as to what some report of mine had in it.

The defendant excepts.

Interrogatory No. XVI

Is it not a fact that at times Jesse Blackburn suffered from psychotic episodes?

Answering the sixteenth cross-interrogatory, he says:

That is a fact.

Interrogatory No. XVII

Over what period of time did these psychotic episodes last—how many hours?

Answering the seventeenth cross-interrogatory, he says:

On several occasions he showed this psychotic behavior over a period of several days or even several weeks; and at other times he would show peculiarities and abnormal behaviors without any provication and just on the spur of the moment.

Interrogatory No. XVIII

State in ordinary lay language what a psychotic episode is.

Answering the eighteenth cross-interrogatory, he says:

A psychotic episode is where they would exhibit abnormal behavior, or abnormal thinking, and complain of imaginary wrongs that were done to them, and of seeing and hearing imaginary things, and making unusual complaints about non-existing things.

Interrogatory No. XIX

When did Jesse Blackburn enter the Searcy Hospital at Mount Vernon, Alabama?

[fol. 151] Answering the nineteenth cross-interrogatory, he says:

He was admitted to the Searcy Hospital on July 29th 1948.

Interrogatory No. XX

When was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

Answering the twentieth cross-interrogatory, he says:

He was discharged from the hospital November 12th, 1952.

Interrogatory No. XXI

Upon what condition was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

Answering the twenty-first cross-interrogatory, he says:

He was discharged from the hospital when dismissed and given into the custody of the sheriff of Colbert County, Alabama, to be carried back to Colbert County for trial.

Interrogatory No. XXII

Referring to your letter of April 27th, 1952, to Judge Robert M. Hill, Judge of the 11th Judicial Circuit, a copy of which was addressed to the undersigned Solicitor of the 11th Judicial Circuit at Florence, Alabama, is it not a fact that for some time prior to August 27th, 1952, that Jesse Blackburn gave no special trouble and did not suffer psychotic episodes?

Defendant objects to Interrogatory No. 22, which refers to a document not in evidence and which is otherwise illegal

and incompetent. Objection overruled. Defendant excepts.

Answering the twenty-second cross-interrogatory, he says:

That is true.

Interrogatory No. XXIII

Is it not a fact that Jesse Blackburn was sane on April 27th, 1952?

Answering the twenty-third cross-interrogatory, he says:

I would say that he was mentally competent at that time.

Interrogatory No. XXIV

Is it not a fact that Jesse Blackburn is presently sane?

Answering the twenty-fourth cross-interrogatory, he says:

I have had no occasion to see him since he was discharged from this institution on November 12th 1952.

(The following appeared at the end of the Cross-Interrogatories):

(S.) W. L. Almon, Solicitor, 11th Judicial Circuit, Solicitor for Plaintiff.

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[fol. 152] In the Circuit Court of Colbert County, Alabama

Cases Numbered 8521 and 8522

State of Alabama *vs.* Jesse Blackburn, Defendant

Certificate

I, John R. Higgins, as commissioner under a commission issued to me on April 15th 1953, by Mrs. W. Lee Stanley, the Clerk of the Circuit Court of Colbert County, Alabama in the above entitled causes, do hereby certify that acting under the said commission, I did cause the witness, Dr. Harry S. Rowe, to come before me at Searcy Hospital (an Alabama State Hospital) at Mt. Vernon, Mobile County,

Alabama, on April 16th, 1953, at 11/30 o'clock AM; that said witness was duly sworn by me and was examined on the direct and cross-interrogatories propounded in writing to the said witness; that said testimony was taken in shorthand by Rit M. Smith, as stenographer appointed by me to take said testimony in shorthand; that said deposition was, on oath, taken as well for the State as for the Defendant, touching his knowledge of the matters and things in controversy in said causes, and that the said stenographer thereupon transcribed his said testimony on the typewriter, and that the foregoing is a true and correct transcript of the testimony so given by the witness.

I further certify that I am neither of counsel nor of kin to either party to the causes, nor am I in any manner interested in the result thereof.

And I do herewith return this deposition with my said commission to the Clerk of the Court under my hand and seal, as witness my hand and seal this the 18th day of April, 1953.

(S.) John R. Higgins, As Commissioner (Seal).

| | |
|---|---|
| Commissioner's fee for taking said deposition | $20.00 |
| and Stenographer's fee for services | 20.00 |
| Total | $40.00 |

Defendant introduces in evidence the deposition of Dr. J. S. Tarwater, all direct interrogatories and their answers; we introduce the commission dated April 15, 1953 to take the deposition; and we introduce the affidavit to take the deposition.

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[fol. 153] STATE OF ALABAMA,
Colbert County, Circuit Court.

To Hon. James Mayfield, of Tuscaloosa, Alabama, Greeting:

Know ye, that we, reposing confidence in your integrity, skill, and ability, have appointed you Commissioner to take the testimony of Dr. J. S. Tarwater, a material witness for the defendant in the causes now pending in the Circuit

Court of Colbert County, Alabama, brought by the State of Alabama under indictments against Jesse Blackburn, as defendant, and we hereby authorize and empower you to call and cause to come before you Dr. J. S. Tarwater, the said witness and his deposition on oath to take as well for the state as for the defendant touching his knowledge of the matters and things in controversy in said causes, which deposition, when so taken shall be signed by said witness and certified by you as Commissioner acting herein; and you are further commanded, the deposition, when so taken with this commission to return under your hand and seal to the Clerk of said court with all convenient speed,

Witness my hand, this the 15 day of April, 1953.

(S.) Mrs. W. Lee Stanley, Clerk.

STATE OF ALABAMA,
Colbert County, in the Circuit Court of Colbert County, Alabama.

Case No. 8521 and Case No. 8522

STATE OF ALABAMA *vs.* JESSE BLACKBURN

AFFIDAVIT TO TAKE DEPOSITION

Before me, Leo Berryman, Jr., a Notary Public, in and for said State and County, personally appeared Jesse Blackburn, who, being by me first duly sworn, deposes and says:

That he is the defendant in the above styled cases; that he desires to take the deposition of Dr. J. S. Tarwater who resides more than 100 miles from Tuscumbia, Alabama, the place where the above causes are set for trial, computed by the route usually travelled; and that the testimony of said witness is material for the defendant in the defense of this cause and his evidence to be secured by this deposition will be material evidence for the defendant [fol. 154] on the trial of these causes and that said witness resides at Bryce Hospital, Tusculoosa in the County of Tusculoosa, Alabama, and that the defense, or a material

part thereof, depends exclusively on the testimony of the said witness.

This, the 6th day of April, 1953.

(S.) Jesse Blackburn, Defendant.

Sworn to and subscribed before me on this, the 6th day of April, 1953. (S.) Leo Berryman, Jr., Notary Public, State at Large.

Interrogatories to Dr. J. S. Tarwater

Now comes the defendant and propounds interrogatories to Dr. J. S. Tarwater, a witness whose testimony, when taken, will be material evidence for the defendant on the trial of the above causes.

First Interrogatory

Please state your name, age, address, occupation, and official title.

1st. To the first interrogatory he saith:

My name is J. S. Tarwater. Age fifty-four. Address: Bryce Hospital, Tuscaloosa, Alabama. Occupation: Psychiatrist. Official Title: Superintendent of The Alabama State Hospitals.

Second Interrogatory

Please briefly state your qualifications as a physician and your experience and training as such. What field of medicine have you specialized in? Please briefly relate your experience and training in the field of medicine in which your have specialized. How many years have you specialized in the treatment of insane persons and mental diseases? Please state approximately how many patients you have seen suffering with mental disorders and diseases during the years of your experience in treating such cases.

2nd. To the second interrogatory he saith:

Graduate of a recognized Medical College. Number of years of specialization in nervous and mental diseases. Staff of Bryce Hospital since 1924. Superintendent of The Alabama State Hospitals, (comprising The Bryce Hospital,

Tuscaloosa, Alabama, and The Searcy Hospital, Mount Vernon, Alabama), since January 1, 1950. During this period I have seen several thousand persons suffering with mental disorders and mental diseases.

[fol. 155] Third Interrogatory

Were you in the year 1948 appointed or commissioned by or in pursuance of an order of the Circuit Court of Colbert County, Alabama, to investigate the insanity of one Jesse Blackburn, colored, under indictment for robbery and assault with intent to murder? If so, please state whether or not the attached paper marked Exhibit A to these interrogatories is a true and correct copy of the order under which you made such investigation.

3rd. To the third interrogatory he saith:

In 1948 I was appointed on a lunacy commission to investigate the sanity of one Jesse Blackburn, colored, under indictment for Robbery and Assault With Intent to Murder, and the attached paper, marked "Exhibit A" is a true and correct copy of the order under which I made the investigation.

Defendant offers Exhibit "A" to Interrogatory No. 3.

The State objects on the same grounds heretofore assigned to a like instrument.

By the Court: The objection is sustained to the introduction of the whole commitment order, but not to the fact that the man was committed there for observation and report by the Judge of this Court.

Defendant Excepts.

Fourth Interrogatory

Please state whether or not you made such investigation of the mental condition of the said Jesse Blackburn in conformity to the order identified as Exhibit A. Please also state the names of the other doctors who acted on such lunacy commission with you. Did you and the other doctors you have named report your findings from such investigation to the judge of the Circuit Court of Colbert County, Alabama? Was such report dated January 6, 1949,

and is the attached paper marked Exhibit B to these interrogatories a true and correct copy of such report?

4th. To the fourth interrogatory he saith:

I made such investigation in conformity with the order identified as "Exhibit A". Dr. H. S. Rowe and Dr. A. M. Richards were the other two members of the commission. The report of our findings was made on January 6, 1949 to the Judge of the Circuit Court of Colbert County, Alabama, and is the attached paper, marked "Exhibit B".

Defendant offers Exhibit "B" in evidence and asks permission to read it to the Jury, but in order to save time, we propose, if agreeable, to read only the third paragraph—this is the same report read before.

[fol. 156] The State objects to the introduction of Exhibit "B" on the same grounds heretofore assigned to the exhibit.

The Court overrules the objection.

(The following is Paragraph Three of the document which is set out in full on Page 143 of this transcript.):

"It is the opinion of each of us, and our opinion jointly and collectively, that the said, Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948 was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged."

Fifth Interrogatory

Did you and the other doctors associated with you find as stated in said report: "From a study of his case and using information from several other mental hospitals where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged."? Did this part of your report relate to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had

been returned and were pending against him in Colbert County, Alabama, at the time of your said report?

5th. To the fifth interrogatory he saith:

In the said report, I together with the other doctors, did find the following: "From a study of his case and using information from several other mental hospitals where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged." This part of our report did relate to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of said report.

Sixth Interrogatory

Subsequent to your report of January 6, 1949, was there an order made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind? If so, please state whether or not the attached paper marked Exhibit C is a true and correct copy of said commitment order dated December 27, 1949. Please state whether or not Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29, 1948, and whether his commitment continued to October 7, 1952.

[fol. 157] 6th. To the sixth interrogatory he saith:

After our report made to the Circuit Court, the Judge of the Circuit Court sent a permanent commitment for the said Jesse Blackburn to the Alabama State Hospitals at the Mount Vernon branch, and the attached paper, marked "Exhibit C" is a true and correct copy of said commitment. Jesse Blackburn was first admitted to the Alabama State Hospitals, (Searcy Hospital), on July 29, 1948, and he stayed in the hospital until November 12, 1952.

Defendant offers Exhibit "C" in evidence, and understands the Court has ruled on it during a recess between counsel, but for the purpose of the record, we would like to have it ruled on at this time.

The State objects on the same grounds heretofore assigned.

The Court sustains the objection to the admission in evidence of the order itself referred to.

Defendant excepts.

Seventh Interrogatory

Please state all the pertinent additional facts and further information and opinions relating to the mental condition of Jesse Blackburn during the month of April, 1948, and during the period from January 1, 1948, to July 29, 1948.

7th. To the seventh interrogatory he saith:

The findings in the cases during and immediately after hospitalization led us to believe that Jesse Blackburn was mentally ill and incompetent, and after a study of reports made about the incident for which charges were filed against him, we were of the opinion that he was mentally ill and incompetent during the month of April, 1948, and during the period from January 1, 1948 to July 29, 1948.

(The following appeared at the end of the direct interrogatories):

(S.) Mitchell & Poellnitz, Attorneys for Defendant.

The name of Aubrey Dominick or James Mayfield of Tuscaloosa, Alabama, is suggested as a fit and suitable person to take down the answers to the foregoing interrogatories and it is requested that a commission issue to him for that purpose.

(S.) C. A. Poellnitz.

A copy of the foregoing has been personally served on W. L. Almon, this 6th of April, 1953.

(S.) C. A. Poellnitz, Atty. for Defendant.

[fol. 158] The State offers in evidence the cross-interrogatories propounded to Dr. J. S. Tarwater.

## Cross-interrogatories to Dr. J. S. Tarwater

Now comes the Plaintiff and propounds cross-interrogatories to the defendant's witness, Dr. J. S. Tarwater:

### Interrogatory No. I

Dr., please state over what period of time you personally observed Jesse Blackburn.

1st. To the first cross-interrogatory he saith:

I saw and observed Jesse Blackburn prior to the preparation of the report to the Court and, not only interviewed him, but also discussed with the other two doctors, Dr. Rowe and Dr. Richards, and read the reports that they had made from time to time.

### Interrogatory No. II

Give the time from the beginning of your observation of Jesse Blackburn and the date he was last seen and observed by you.

2nd. To the second cross-interrogatory he saith:

My observation of Jesse Blackburn occurred several weeks prior to the giving of the report to the Court that in our opinion he was mentally ill and incompetent. I am unable to give the exact date of the beginning of my observation.

### Interrogatory No. III

How often did you see Jesse Blackburn and observe him?

3rd. To the third cross-interrogatory he saith:

I saw and observed Jesse Blackburn on at least four or five occasions during his stay in The Searcy Hospital.

### Interrogatory No. IV

How long or how many hours did you see and observe Jesse Blackburn each day you saw him?

4th. To the fourth cross-interrogatory he saith:

It is difficult to estimate the number of hours spent in observing and interviewing Jesse Blackburn. I would judge

approximately two or two and one-half hours would cover the entire time.

Interrogatory No. V

How long and over what period of time did he exhibit abnormal thinking and abnormal behavior?

[fol. 159] 5th. To the fifth cross-interrogatory he saith:

Over a period of several months after admission in Searcy Hospital.

Interrogatory No. VI

Is it not a fact that at times Jesse Blackburn's thinking was normal?

Defendant objects to cross-interrogatory No. 6 on the grounds that it is not confined to any particular time; the question is too general, it's misleading and prejudicial. Objection overruled. Defendant excepts.

6th. To the sixth cross-interrogatory he saith:

There were very few times up to the rendering of the report where Jesse Blackburn's thinking was considered normal, however, during the past year there have been occasions when he was apparently normal mentally.

Interrogatory No. VII

Is it not a fact that at times Jesse Blackburn's behavior was normal?

Defendant objects to cross-interrogatory No. 7 on the grounds that it is not confined to any particular time; the question is too general, it's misleading and prejudicial. Objection overruled. Defendant excepts.

7th. To the seventh cross-interrogatory he saith:

The same pertains to Jesse Blackburn's behavior. For a long period of time after hospitalization his behavior was quite disturbed, and there might have been occasions when, for a day or so, his behavior was fairly normal, however, it was not continuously so. In later months his behavior has been normal.

Interrogatory No. VIII

Is it not a fact that Jesse Blackburn's thinking and also his behavior was more normal than abnormal?

Defendant objects to cross-interrogatory No. 8 on the grounds that it is not confined to any particular time; the question is too general, it's misleading and prejudicial. Objection overruled. Defendant Excepts.

8th. To the eighth cross-interrogatory he saith:

It is not true that Jesse Blackburn's thinking and behavior was more normal than abnormal for a long period of time after entering Searcy Hospital. It is true that he has been more normal during the past year.

[fol. 160] Interrogatory No. IX

Is it not a fact that at times Jesse Blackburn was rational in his thinking?

Defendant objects to cross-interrogatory No. 9 on the grounds that it is not confined to any particular time; the question is too general, it's misleading and prejudicial. Objection overruled. Defendant excepts.

9th. To the ninth cross-interrogatory he saith:

Jesse Blackburn was not rational in his thinking up to the time of the rendering of the report. There have been long periods of time within the past year where he was rational in his thinking and he was rational in his thinking at the time he was discharged from Searcy Hospital.

Interrogatory No. X

Is it not a fact that at times Jesse Blackburn was rational in his behavior?

Defendant objects to cross-interrogatory No. 10 on the grounds that it is not confined to any particular time; the question is too general, it's misleading and prejudicial. Objection overruled. Defendant's excepts.

10th. To the tenth cross-interrogatory he saith:

The same is true of Jesse Blackburn's behavior as mentioned in regard to his thinking, which is stated in cross-interrogatory number nine.

Interrogatory No. XI

Is it not a fact, Dr. Tarwater, from your observation of Jesse Blackburn, that he, at times, had lucid intervals?

Defendant objects to cross-interrogatory No. 11 on the grounds that it is not confined to any particular time; the question is too general, it's misleading and prejudicial. Objection overruled. Defendant excepts.

11th. To the eleventh cross-interrogatory he saith:

There were lucid intervals after a few months period of hospitalization.

Interrogatory No. XII

Is it not a fact that your report in writing dated January 6th, 1949, to Honorable Robert M. Hill, Judge of the Circuit Court, Tuscumbia, Alabama, is based partly upon your observation of Jesse Blackburn, and also partly upon information from several other mental hospitals where he was treated?

12th. To the twelfth cross-interrogatory he saith:

The report given to Hon. Robert M. Hill, Judge of Circuit [fol. 161] Court, Tuscumbia, Alabama, January 6, 1949, is based on observation and study of Jesse Blackburn, together with all other information supplied us from relatives and from several other mental hospitals where he had been previously treated.

Interrogatory No. XIII

When did you first see Jesse Blackburn?

13th. To the thirteenth cross-interrogatory he saith:

I do not know the exact date of my first interview with Jesse Blackburn.

Interrogatory No. XIV

What was his mental condition on April 19, 1948?

14th. To the fourteenth cross-interrogatory he saith:

From study of his case, together with other information furnished, it is my opinion that on April 19, 1948, Jesse Blackburn was mentally incompetent.

Interrogatory No. XV

What was his mental condition on May the 8th, 1948?

15th. To the fifteenth cross-interrogatory he saith:

It is my opinion that, on May 8, 1948, Jesse Blackburn was mentally ill and mentally incompetent.

Interrogatory No. XVI

Is it not a fact that at times Jesse Blackburn suffered psychotic episodes?

16th. To the sixteenth cross-interrogatory he saith:

It is true that, for a number of years, Jesse Blackburn has suffered from psychotic episodes, however, there is history to indicate that he does clear up from these psychotic episodes from time to time.

Interrogatory No. XVII

Over what period of time did these psychotic episodes last—how many hours?

17th. To the seventeenth cross-interrogatory he saith:

This psychotic state lasted fairly continuously for several months, then for shorter intervals of a week or two continuously until a state of remission.

(There was no Interrogatory numbered 18.)

Interrogatory No. XIX

When did Jesse Blackburn enter the Searcy Hospital at Mount Vernon, Alabama?

[fol. 162] 19th. To the nineteenth cross-interrogatory he saith:

Jesse Blackburn entered Searcy Hospital at Mount Vernon July 29, 1948.

Interrogatory No. XX

When was Jesse Blackburn discharged from Searcy Hospital, at Mount Vernon, Alabama?

20th. To the twentieth cross-interrogatory he saith:

Jesse Blackburn was discharged from Searcy Hospital at Mount Vernon, Alabama on November 12, 1952.

Interrogatory No. XXI

Upon what condition was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

21st. To the twenty-first cross-interrogatory he saith:

Jesse Blackburn was considered mentally competent at the time of his discharge from Searcy Hospital at Mount Vernon, Alabama.

(The following appeared at the end of the Cross-Interrogatories):

W. L. Almon, Solicitor, 11th Judicial Circuit
for Plaintiff.

(The following appeared at the end of the Answers and Interrogatories):

(S.) J. S. Tarwater.

I, James Mayfield, the Commissioner in said commission named, do hereby certify that the foregoing testimony and answers, taken down and written by me in the words os the witness, Dr. J. S. Tarwater, were read over to him; that he assented, swore to and subscribed the same in our presence, at the time and place herein mentioned; and that I have personal knowledge of the personal identity of the said witness; that I am not of counsel or kin to either of the parties to said cause, nor interested in the result thereof. And I enclose the said testimony, together with the said commission and the interrogatories, direct and cross, to the said Clerk of the Circuit Court, whence the same emanated, as my full execution of said commission. Given under my hand and seal, this the 17th day of April, 1953.

(S.) James Mayfield (L. S.) Commissioner & Notary Public (Seal).

[fol. 163] By the Court:

Gentlemen of the Jury, the lunch hour has come again; we will stop for the time being and we ask that you gentlemen be back at 1:30 today. Please be under the same instructions as before. Gentlemen, I think we will make that a quarter of two to give you time to get your meal without being rushed. The Solicitor has some work to do about some other cases, and he is coming back at 1:15, but you can come back at a quarter of two. You are under the same instructions with Mr. Searcy.

(After lunch.)

By the Court: The case is still with the defendant—call the next witness.

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JESSE BLACKBURN, the defendant, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Poellnitz:

Q. Is your name Jesse Blackburn?
A. Yes, sir.
Q. You are the defendant in this case, are you not?
A. Yes, sir.
Q. Where were you born?
A. Alabama, sir.
Q. What town?
A. Toney, Alabama, out from Huntsville, thirteen miles in Madison County.
Q. And where did you live up until the time you went in the Army?
A. Chicago, Illinois.
Q. How long did you live in Toney or Decatur?
A. I lived in Toney until the age of three and moved to Decatur and was a resident there until I was sixteen.
Q. Then you moved?
A. Yes, sir.
Q. When did you first go in the service?
A. In 1939.

Q. How long did you stay in the service?

A. I stayed in service three years, eight months, in the Merchant Marine.

Q. Did you go back in service?

A. No, sir, I was in civilian life and was inducted into the United States Army.

[fol. 164] Q. When was that?

A. In 1943.

Q. There has been put in evidence here a statement marked State's Exhibit "A", purporting to be a statement made by you and written out by Deputy Sheriff Stanford—you heard this statement when it was read, did you not?

A. Yes, sir.

Q. And you heard the substance of what it said in relation to what you did or did not do on April 19, 1948?

A. Yes, sir.

Q. Is this statement true or not true?

A. Not true, sir.

The State objects because it is illegal, irrelevant and incompetent; it is a question for the Jury. Objection overruled.

Q. Did you make the statement, Jesse?

A. Not to my knowledge, sir.

Q. I want you to look at the signature on the bottom of each of the pages and state whether or not that appears to be your signature?

A. I would say these signatures are very much identical to mine.

Q. You say they appear to be your signature?

A. Yes, sir.

Q. What is the first mental institution that you were committed to?

A. The first mental institution I was committed to in military service or civilian life?

Q. Military service first.

A. Drew Field in Tampa, Florida.

Q. Was that a mental hospital?

A. Yes, sir.

Q. Had you been treated before that?

A. No, the only time I cam- in contact with a Psychiatrist was after I was in service.

Q. First at Drew Field, Florida?
A. Yes, sir.
Q. Was that in 1944?
A. 1943, sir.
Q. What other mental institutions have you been in?
A. Danville, Illinois.
Q. Is that a State or a Veterans Hospital?
A. It is a Veterans Administration Hospital.
[fol. 165] Q. Is that a mental institution?
A. Yes, and nervous institution also.
Q. How long did you stay there?
A. From some time in 1944 until I was released to the custody of my mother.
Q. About when was that, if you remember?
A. November, I presume.
Q. What year?
A. 1945—no, 1944.
Q. Were you re-committed to that same institution?
A. I was.
Q. When?
A. I was re-committed in 1947, sir.
Q. In this case you are charged with robbing Mr. Wright, who was operating Mr. Greenhill's Store in Colbert County on the Allsboro Road near the Mississippi line—Did you commit that offense?
A. No, I don't think I did; at least I am positive I didn't because due to the fact I have been able to lay eyes on Mr. Wright, the one who is prosecuting me, and it is the first time I have seen him; and again, I don't believe I would do such a thing as that.

The State objects and moves to exclude the statement that 'I don't believe I would do such a thing as that' because it is not responsive.

By the Court: Motion sustained as to the last part of the answer that he didn't believe himself that he would do such a thing; that is excluded so please don't consider that when you deliberate.

Q. Do you recall being in jail in Colbert County in 1948?
A. I don't, sir.
Q. Do you recall being in Colbert County in 1948 in the month of April?

A. I don't, sir.

Q. Do you recall getting married in Iuka, Mississippi?

A. I don't previous to the time of being accepted in the institution and the diagnosis by the Staff—they told me I was a married man.

Q. You have been told you are a married man?

A. Yes, sir.

Q. You were committed in 1949 to Mount Vernon?

A. That's my understanding from the Staff.

Q. Were you there part of 1949 and 1950 and 1951 and part of 1952?

A. I recall being there in 1951.

Q. Will you tell the Jury how you were put in the hospital?

[fol. 166] A. After being readjusted there, in 1951 I found myself at this institution, but before then I didn't realize I was in Alabama, I always thought I was in Illinois.

Q. What kind of room were you in?

A. They had me in a room of confinement until my release in 1952.

Q. What type room was that?

A. About eight by six I would say, sir.

Q. Was that solitary confinement?

A. Yes, sir.

Q. Were you permitted to leave that room?

A. No, I was concealed under three locks.

Q. Since November 12, 1952, you have been in the Colbert County Jail?

A. Yes, sir.

Q. And you have been in confinement there?

A. Yes, sir.

Q. Until you came here to be tried?

A. Yes, sir.

Q. Jesse, a minute ago, I asked about this statement and you said the signatures on there looked like your signatures—Do you recall signing any statement like this for Mr. Stanford?

A. I do not, sir.

Q. When the contents of the statement were read, did you remember anything in the statement that had taken place?

A. I don't, sir.

Q. Do you remember Mr. Stanford asking you questions in May, 1948?

A. No, sir.

Q. Do you remember Sheriff McCorkle or any others asking you questions?

A. No, sir.

Cross-examination.

By Mr. Almon:

Q. Jesse, where did you live on April 4, 1948?

A. April 4, 1948?

Q. Uh huh.

A. I cannot recall, sir.

Q. Did you know Dennis Thorne on April 4, 1948?

A. I do not.

Q. Did you know Robert Howell on April 4, 1948?

[fol. 167] A. I have known Robert Howell ever since we was in junior high school.

Q. Did you know him during that year, 1948?

A. No, sir.

Q. When you—When did you last see him?

A. I last saw him in 1943 as far as I can remember.

Q. Where was that?

A. In Chicago.

Q. Where was he living at that time?

A. He or I?

Q. I said, 'he'.

A. I don't know where he was living, sir, at that time. I met him on the street in 1943.

Q. Where were you living in 1943?

A. On 47th Street in South Chicago.

Q. Where were you living in 1948?

A. I don't recall.

Q. Do you know Bernice Moore—Do you remember meeting her in Decatur in April, 1948.

A. I don't know her.

Q. Or Dorothy Garth?

A. I don't know.

Q. Do you know Robert Hare?

A. No, sir.
Q. Do you know Fannie Rogers?
A. I didn't then.
Q. Do you know her now?
A. I think I do.
Q. Where is she?
A. Over there (indicating).
Q. Is she your wife now?
A. Yes, sir.
Q. Do you remember going to Mississippi in 1948 and marrying her?
A. I do not.
Q. You did take out a marriage license on April 15, 1948 to marry her?
A. I don't know, sir.
Q. Do you remember having a wedding supper at Jack Thorne's, the half-brother of Dennis Thorne, after you married her on April 15, 1948?
A. I do not, sir.
[fol. 168] Q. On the night after you married Fannie Rogers on April 15, 1948, do you remember staying at Leon Fuqua's house?
A. I do not, sir.
Q. Do you know Leon Fuqua?
A. I do not, sir.

(The Solicitor to the Bailiff: Tell Leon Fuqua to come out.)

(Leon Fuqua came out of the witness room.)

Q. Do you remember Leon Fuqua?
A. The first time I seen him was yesterday, sir.

(The Solicitor to the Bailiff: Tell Jack Thorne to come in, please.)

(Jack Thorne came out of the witness room.)

Q. Do you remember seeing Jack Thorne before?
A. I recall seeing him yesterday.
Q. That was the first time?
A. Yes, and the second time is now.
Q. When was the first time you saw Fannie Rogers to know her?

A. When she arrived at the mental institution in Mount Vernon, Alabama, sir.

Q. What date?

A. She came before they said.

Q. What date did you see her?

A. The first date I remember seeing her was 1949, I think; I am not sure.

Q. You received letters from her before that?

A. Occasionally, but they were read to me by the Staff of the Institution.

Q. When?

A. I wouldn't recall the date.

Q. Did you answer the letters?

A. Some I did with the help of other inmates and nurses.

Q. When they were read you understood that was your wife?

A. Through being told in Staff.

Q. Who told you?

A. Dr. H. S. Rowland.

Q. You remember it?

A. He told me in Staff.

Q. Do you remember it?

A. He told me in Staff.

Q. What is that?

A. That is a meeting called when they are getting ready to release you. They call a meeting of the Staff and diagnose your case and tell you all the things and involvement [fol. 169] you have been in, and your conditions, what you had in the past, and they wish you future happiness.

Q. What do you mean by diagnose the case?

A. That is studying one's behavior from the time of entering the institution until the release.

Q. How do they study it?

A. They diagnose it by giving I. Q. tests.

Q. What is I. Q.?

A. That is according to one's learning, experience and living found by a Psychiatrist.

Q. What is a Psychiatrist?

A. One who studies human behavior. It is broken into two syllables when you get the meaning—psychi is studying the soul and atric is studying medicine.

Q. Studying medicine and the soul?

A. Yes.

Q. Who is the Psychiatrist there?

A. There are several.

Q. Name one.

A. Dr. Trice, Dr. H. S. Rowland, Dr. A. M. Richardson and Dr. Hurd and several ones that came there and helped to study my case; some from Canada and some from Tuskegee.

Q. Did you and Dr. Richards get along?

A. Yes, sir.

Q. Did you see him much?

A. I didn't see him much; he was an old man and didn't get around much. He was working as a Pharmacist; he hardly ever got around to the patients. I remember seeing him a little while before I was released, he and Dr. Tiedwater.

Q. Do you remember seeing Dr. Tarwater?

A. He diagnosed my case.

Q. How many times did you see him?

A. Maybe three times.

Q. What about Dr. Rowe?

A. Dr. Rowland--I saw him more than any of them.

Q. What kind of doctor was he?

A. I would say a very good doctor; at least, all was as far as I know, none give me any trouble, or made me have hatred.

Q. Did you give them trouble?

[fol. 170] A. Not as I know; I tried to give them all the respect I could.

Q. Who was the first Psychiatrist at Mount Vernon that gave you a treatment?

A. I wouldn't know.

Q. Who was the second?

A. I wouldn't know.

Q. Who was the third?

A. I wouldn't know.

Q. What Psychiatrists did you see there?

A. I saw all before I left; I don't recall who was the first, second or third, but I can say I saw all of them before I left the institution.

Q. You remember seeing Fannie, your wife, down there?

A. I seen her down there, I think it was March 3, 1952, I mean 1953.

Q. March 3, 1953?

A. 1952—excuse me—it was last year a little bit before my release in October.

Q. Was that the first time you saw her?

A. That's the first I remember seeing her.

Q. Was that the first time you saw her?

A. That's the first time I saw her to know she was my wife; I had been told that I had a wife.

Q. Who told you?

A. Different ones, doctors and nurses.

Q. Who were they?

A. The nurses change; I don't know whether they are still there.

Q. Give me their names?

A. One was Mr. Love and one was Mr. Bailey, he was head nurse.

Q. You were locked behind three doors?

A. Three locks.

Q. You were locked behind three doors all time?

A. Two doors and three locks.

Q. Were you there all time?

A. As far as I know, but where I was before that time, I couldn't say because it is beyond my understanding and knowledge where I was at the time before then.

Q. Do you remember when your brother died in 1948 in Pennsylvania?

A. Can I remember?

Q. Yes.

A. I cannot exactly remember when he died.

Q. When did he die?

[fol. 171] A. I don't know.

Q. What was his name?

A. Ezra.

Q. Is he living or dead?

A. He is deceased.

Q. Where was he buried?

A. He is supposed to be buried in Decatur, Alabama.

Q. You have lived at Toney, Alabama?

A. Yes, sir.
Q. That's in Madison County?
A. Yes, sir.
Q. How far is that from Decatur?
A. About forty miles.
Q. Do you have relationships in Alabama?
A. Yes, sir.
Q. Who is that?
A. I have an aunt.
Q. What's her name?
A. Annie Robinson.
Q. Do you know where Papa Rock's Cafe is in Decatur.
A. Yes, I have known that about twelve years.
Q. You know where it was in April, 1948?
A. I imagine it is in the same place, but I don't know except what I recall in the past as being a resident of Decatur.
Q. Where did you finish high school?
A. In Illinois.
Q. What high school?
A. Desiber.
Q. You went to college?
A. I went to a vocational school.
Q. What school?
A. Drenbay.
Q. What year did you finish high school?
A. 1940.
Q. What year did you finish college?
A. It was not college; it was subjects one has for taking as a trade or occupation when he is in high school.
Q. What trade did you take up?
[fol. 172] A. Machinist.
Q. When did you enter that?
A. 1942.
Q. How long did you stay there?
A. Until 1943.
Q. Did you get special training there?
A. Well, it would be I consider special training like learning different portions of machinery and things you didn't know otherwise.
Q. When was the last you attended there?

A. It was May.
Q. What year?
A. May in 1942, I think.
Q. What did you do after you left the school?
A. I went into service.
Q. What year?
A. 1943.
Q. About what date in 1943?
A. I can't recall; it was September 3rd or 23rd.
Q. Where were you inducted?
A. Local Board 85, Garfield Boulevard.
Q. What camp did you go to first?
A. Fort Custor, Michigan.
Q. Is that at Battle Creek, Michigan?
A. Yes, sir.
Q. What type of training did you have there?
A. Mostly basic.
Q. How long did you stay there?
A. I couldn't give the exact date but I would say a month or more.
Q. Well, you were all right at that time—Give your best judgment as to how long you had basic training there?
A. I would say a month or more.
Q. What type of service were you in?
A. Replacement, sir.
Q. What base were you assigned to?
A. I hadn't been assigned; I was going through the Reception Center; I was sent to Jefferson City, Missouri for basic training.
Q. How long were you there?
A. Four months, I would say.
[fol. 173] Q. What training did you get there?
A. Ground Air Corps, partly Infantry; it was mixed training.
Q. Where did you go from there?
A. Florida.
Q. Where in Florida?
A. McDill Field.
Q. What outfit were you with there?
A. With the Air Corps.
Q. What Squadron?

A. No Squadron, just remained there a week or so.

Q. What training did you go through there?

A. We was transferred and wasn't attached to any unit.

Q. What was your Serial Number ?

A. 36792861.

Q. How long were you in Florida?

A. I was in Florida for the remainder of my time in service.

Q. What did you do there?

A. I was just transferred from McDill to Avon Park, Florida.

Q. How long did you stay at Avon Park, Florida?

A. I stayed there until I was discharged. As I can recall from my discharge I was transferred to Drew Field; that was on the discharge, but I can't recall it because I never reached this base as far as I know.

Q. You remember breaking your arm, don't you?

A. I do not, sir.

Q. Down at Avon Park?

A. No, sir.

Q. Do you remember having it in a sling?

A. No, sir.

Q. Do you remember taking the truck without permission?

A. I never did.

Q. You didn't do that along about July 1, 1944?

A. Not as I know of.

Q. Huh?

A. Not as I know of; I had privileges of driving most every vehicle in the service.

Q. When did you first remember that you didn't remember anything?

A. Along about that time.

The defendant objects because it is incompetent and his [fol. 174] conclusion. Question withdrawn.

Q. When did your mind go blank?

Defendant objects because it is incompetent——

A. I don't know.

Defendant objects because it calls for his conclusion. Objection overruled. Defendant excepts.

A. I don't remember nothing about no mind going blank.

Q. Do you remember driving a truck on June 12, 1944 in Florida and breading your left arm?

Defendant objects because it is repetition. Objection overruled. Defendant excepts.

Q. Go ahead and answer it.

A. I don't remember breaking my left arm, but I remember being given order by Sgt. Jenkins of my Company to go out and pick up some materials. It wasn't a truck; it was a quarter-ton vehicle, a jeep.

Q. You remember the jeep?

A. I remember getting in the jeep and taking my order from Sgt. Jenkins to get the material.

Q. Do you remember when you were discharged?

A. I don't remember being discharged.

Q. Didn't you tell——

A. I told him as far as I know from my discharge, the medical discharge I have in my possession now, that it was stated on there the time of the dismissal.

Q. Do you remember on September 11, 1944 being in Danville, Illinois in the hospital?

A. No, sir.

Q. Do you remember talking to them up there in Staff?

A. No, sir.

Q. Do you remember talking to them about your condition?

A. No, sir.

Q. Do you remember giving them your life history?

A. I don't think I did.

Q. Do you remember on April 16, 1948 being in Danville, Illinois?

A. April 16, 1948?

Q. Yes— No, August 16, 1948?

A. August 16, 1948—I was supposed to have been confined in that institution at that time.

Q. You are sure?

[fol. 175] A. I am not positive, I was supposed to be; they moved me around so much, I don't know.

Q. On April 22, 1949, do you remember being in Danville, Illinois, or where were you?

A. I don't know.

Q. Do you remember being released from the hospital

in Danville along in April, 1949, and going to visit your sister?

A. I have a sister.

Q. Living in Chicago?

A. Yes, sir.

Q. You visited her in 1949 on trial visit, didn't you?

A. I don't remember visiting her in 1949, no, sir.

Q. Where were you on September 13, 1948?

A. I can't recall where I was at that time, sir.

Q. Do you remember where you were on January 10, 1948?

A. January 10, 1948——

Q. Do you remember when you got the ten-day leave and your sister came up there and you were released to be with your sister on a trial visit home?

A. I don't recall getting a ten-day release.

Q. What release did you get?

A. Not any that I can remember.

Q. Do you remember leaving the hospital in January, 1948?

A. No, I don't remember leaving the hospital.

Q. February, 1948?

A. No, sir.

Q. In March, 1948?

A. No, sir.

Q. In April, 1948?

A. No, sir.

Q. Do you remember being at home?

A. The last time I remember being at home was in 1945 I think 1945.

Q. Examine this signature and tell the Jury whether or not that is your signature to this—come down here and look at it?

Defendant objects because it is repetition— he testified that it was his.

By Mr. Almon: He said it resembled it.

By the Court: He first asked if it was his and he said it resembled it and then he asked if it was his and he said 'Yes'.

By Mr. Almon: He said it resembled it.

[fol. 176] By the Court: Well, go ahead.

By Mr. Almon:

Q. Is that your signature there?

A. Well; I would say if was comparable to the signature of mine, but I wouldn't say this was exactly mine.

Q. Say 'yes' or 'no'.

A. I couldn't give a definite answer because I am not one specialized in handwriting.

Q. You know your own handwriting, don't you?

A. Yes, but a lot of handwriting is about the same.

Q. Is it yours?

A. I wouldn't say it is or is not.

Q. This page (indicating) is that your signature?

A. I wouldn't say it is or not.

Q. What about this one (indicating)?

A. Not either one of them: I have looked over them two or three times.

Q. Will you write your name there ten times please—just write 'Jesse Blackburn'.

(The Defendant writes on a piece of paper handed to him.)

The State introduces this as Exhibit "A" to his testimony on cross-examination.

(No objections.)

(This Exhibit contains the signature of Jesse Blackburn —written ten times.)

Q. You say you don't remember Dennis Thorne?

A. No, sir.

Q. Do you remember being over at Jack Thorne's and someone sitting on a gray mule and Mr. Wright coming by?

A. No, I don't remember a gray mule.

Q. What do you remember?

A. Nothing about it.

Q. What kind of mule was it?

A. I don't remember nothing about no mule at all except the ones on the reservation, is that what you are talking about?

Q. You are talking.

A. They have quite a few up there.

Q. I show you here a brown hat which says 'Harris Men's Wear, 551 East 47th Street, Chicago, Illinois', is that your hat?

A. No, sir.

[fol. 177] Q. Have you seen it before?

A. No, sir.

Q. You lived in Chicago when? That's your home?

A. No, my home is in Alabama; I have been living in Chicago a few years.

Q. How long have you lived there—What street do you live on in Chicago—what is your address?

A. I lived at 905 South Walcott Avenue.

Q. What is the address of your sister up there?

A. 539 East 61st Street.

Q. How far is it from where you live in Chicago to 551 East 47th Street?

A. That would be on the south side of Chicago and I live on the west side. That would be south to 60th—47th—13, 14—that's east—I would say that would be about twenty-one blocks from my sister's house there and it is several miles from my house.

Q. Do you know where Harris Men's Wear is?

A. I think they have several different stores there, which is a chain of them.

Q. Do you know where the one at 551 East 47th Street is?

A. I haven't been in that one; I know where that block is in that community.

Q. Have you ever bought a hat there?

A. No, I buy most of mine from Rockshire.

Q. I show you another hat—you say you buy Warchire hats?

A. Rockshire, not Warchire.

Q. Do you know where Warchire is?

A. No, sir.

Q. Is this the style hat you wear?

A. No, it is not.

Q. It is not the hat you had on?

A. It is not the style I wear.

Q. I show you this wrench—is that the wrench you had

when you hit Mr. Wright—I mean when Robert Howell hit Mr. Wright?

A. I never had the wrench before and yesterday was the first time I saw it.

Q. When was the first time you saw Thomas Clyde Wright?

A. Yesterday was the first time.

Q. You tell the Jury you didn't see him on the night of April 19, 1948 on Crowell Hill on the Allsboro Road?

A. That's true: I never did.

Q. Have you seen this instrument before?

A. I did yesterday.

[fol. 178] Q. Isn't this the instrument Robert Howell used there in your presence on Mr. Wright's head on April 19, 1948, on Crowell Hill?

A. He didn't use it in my presence.

Q. What kind of car did Robert Howell have in April, 1948?

A. I don't know exactly what kind of car he had.

Q. I have in my hand here a receipt from Dr. L. K. Ruday, Optometrist, Chicago, Illinois—Do you know him?

A. May I see that?

Q. Do you know him?

A. No, not by the name, I may if I see what you have.

Q. Do you wear glasses?

A. No, sir.

Q. You don't?

A. I wore glasses a little in the Army.

Q. What type did you wear?

A. Mostly field glasses.

Q. Did you have them repaired in January, 1948 by Dr. Ruday, 428 South Dearborn Street, South Chicago, Illinois?

A. No, sir.

Q. How far is that South Dearborn from your sister in Chicago?

A. That would be ten miles or more, I imagine.

Q. Will you look at this glass case which says '$5.00 reward, if found, return to Mr. Jesse Blackburn, 451 50th Street'—Where were you living at that time—Did you ever live on 50th Street?

A. I never have: I have had a sister that operated a

business there. What was the address there on 50th—four fifty what?

Q. 451 East 50th Street.

A. She operated a business there.

Q. What kind of business did she have?

A. Beautician.

Q. When—Does she have it there now?

A. I don't know; I haven't seen her——

Q. When did she last operate it?

A. I don't know; I haven't been there in a long time.

Q. Do you know Dr. H. S. Tripp, Optometrist?

A. That is a doctor in New York City.

Q. Look at that and see if you have seen that glass case before?

[fol. 179] A. Sure, I have.

Q. Is that yours?

A. This glass case belonged to me and was supposed to have been in my credentials from the hospital. That was supposed to be in my personal belongings at Mount Vernon.

Q. Are you sure of that?

A. As far as I know it was supposed to be.

The State offers this glass case in evidence as Exhibit "B".

Q. I show you this receipt from L. K. Ruday, Optometrist, Receipt No. 7759, dated January 3, 1948.

The defendant objects to the introduction of the glass case and the receipt unless it is connected.

A. I don't know him.

By the Court: Do you intend to connect it?

By Mr. Almon: It is to test his recollection.

Objection sustained.

Q. Did you ever work for Swift Company in Chicago?

A. Swift?

Q. Yes.

A. What year was that?

Q. 1947.

A. I have a brother employed there.

Q. Is his name 'Jesse Blackburn'?

A. I have a brother there named David, but before you can get in that Company, you have to have a pass. I have been there on a pass.

Q. That Company withholds income tax on Form W-2, doesn't it?

A. Withholding?

Q. Yes, hold back part of your salary on income tax—do they work more then five people?

A. Well, I don't know anything about it; I couldn't give you information on what the employees do there.

Q. You said you had been there?

A. I don't know whether they work five or five hundred or five thousand; I couldn't tell you that.

Q. In 1947 did you have a Social Security number?

A. Not as I know of.

Q. Look at this W-2 Form—Wages paid, $147.70, Federal Income Tax Withheld, if any, $3.70; Employee to [fol. 180] whom paid, Jesse Blackburn, Social Security No. 409-42-6961, 905 South Walcott, Chicago, Illinois?

A. I understand it now.

Defendant objects to the question and the whole line of questioning on the grounds it is illegal, irrelevant, incompetent, immaterial, sheds no light on any issue in the case, and is an attempt to impeach the witness on an immaterial point.

By Mr. Hollingsworth: The mere fact that the man had a job in 1947 before 1948 is relevant to show his ability to hold a job.

Objection overruled.

Defendant objects on the further ground that we do not know the document is authen-ic; it is not subject to cross-examination.

By the Court: He hasn't offered it in evidence, objection overruled. Defendant excepts.

Q. Read that out loud.

A. Well, about this concern Jesse Blackburn, now, my brother, David, he had used my name at this Company, and he has been employed there several years.

Q. You authorized him to use your name?

A. Certainly.

Q. You knew he was using it?

A. Yes, ever since I was in the service; he is working there now.

Q. Did he have authority to file income tax in your name?

A. I don't know, but I know he used my name and paid income tax.

Q. Did your brother come to the funeral when you came down?

A. Not that I know of.

Q. Not that you know of?

A. No, sir.

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FANNIE BLACKBURN, a witness for the Defendant, being first duly and legally sworn, testified as follows:

Direct examination.

By Mr. Poellnitz:

Q. Is your name Fannie Blackburn?

A. Yes, sir.

Q. Where do you live?

A. I live out from Cherokee on the Allsboro Road.

Q. That's in Colbert County, Alabama?

[fol. 181] A. Yes, sir.

Q. Are you the wife of the defendant, Jesse Blackburn?

A. I am.

Q. And when were you and Jesse Blackburn married?

A. April 16, 1948.

Q. And was Jesse Blackburn in Colbert County at that time?

A. He was.

Q. Where were you married?

A. In Iuka, Mississippi.

Q. What day of the week was April 16, 1948—do you remember?

A. It was on Friday.

Q. When you were married in Iuka, Mississippi, where did you go from there?

A. I came back home.

Q. Was Jesse with you?

A. Yes, sir.

Q. How long did he stay there?

A. He stayed there—we spent the night at Leon Fuqua's; we went from my home there.

Q. How far away is that?

A. That's in Allsboro, about two and a half or three miles.

Q. That was Friday night, April 16, 1948?

A. Yes, we also spent some time at Jack Thorne's house.

Q. Is he a neighbor of yours?

A. Yes, sir.

Q. How far did he live from your house?

A. Just a little piece; you can see his house from my house.

Q. Where did you go on Saturday, April 17, 1948?

A. Well, we left Leon Fuqua's and came back to my home.

Q. How long did Jesse stay at your home?

A. Until about 4:30 or 5:00, Saturday evening.

Q. What happened then?

A. Well, he left.

Q. Who did he leave with?

A. Dennis Thorne and Robert Howell.

Q. Do you know where he left for?

The State objects because that would be her conclusion. Objection sustained. Defendant excepts.

Q. Did you see him again after four or five o'clock, [fol. 182] Saturday afternoon, April 17, 1948?

A. No, I didn't see him.

Q. Did he spend the night at your home or in the vicinity of your home that night?

A. No, he didn't.

Q. Did you see him the following Sunday, April 18, 1948?

A. No, sir.

Q. Did you see him on Monday, April 19, 1948?

A. No, I didn't see him then.

Q. When Jesse left did he have any money?

A. Yes, sir, he had some money.

Q. Did he give you any money?

A. Yes, sir, he did.

Q. How much did he give you before he left your home?

A. He gave me $20.00.

Q. And you know he had other money?

A. Yes, sir, but I don't know how much.

Q. When was the next time you saw Jesse again after Saturday, April 17, 1948?

A. The next time was at the jail house at the County jail over here.

Q. Was that in May, 1948?

A. It might have been later—maybe the latter part of April or the first of May; I don't remember the date.

Q. But you didn't see him after April 17, 1948 until you saw him in the County Jail?

A. No, sir.

Q. He hadn't been to your house?

A. No, sir.

Q. How far do you live from Crowell Hill on the Allsboro Road?

A. Oh, it's a little over a mile.

Q. Do you live on the same road that Crowell Hill is on?

A. Yes, sir.

Q. Does Jack Thorne live on the same road?

A. Yes, sir.

Q. Did you see Jesse on the Monday it is said that Mr. Wright was robbed?

A. No, sir, I didn't see him.

Q. How long had you known Jesse before you were married?

A. Oh, not very long.

Q. Did you know there was anything wrong with him mentally?

[fol. 183] The State objects because it assumes that something was wrong and she is not qualified to answer. Objection overruled.

A. No, I didn't know it.

Q. When you came to the jail to see Jesse in the latter part of April or the first of May, 1948, what did he say about you, if anything?

A. Well, he didn't say much of anything about me only he told me he had been told by the Officers that he was married to me.

The State objects and moves to exclude that because it is illegal, incompetent and hearsay. Objection and motion overruled.

Q. He told you the officers told him you all had been married?

A. Yes, sir.

Cross-examination.

By Mr. Hollingsworth:

Q. You were Fannie Rogers before you married?
A. I was.
Q. You are now Fannie Blackburn?
A. Yes, sir.
Q. Where did you and Jesse go to get married?
A. Iuka, Mississippi.
Q. Is that Tishomingo County?
A. Yes, sir.
Q. How did you travel, ride or walk?
A. We was riding.
Q. What sort of automobile did you go over there in?
A. You mean what kind?
Q. Was it a Buick, Chevrolet, T Model or what kind?
A. I really don't know.
Q. Was it a red automobile?
A. It was maroon.
Q. Was it a large automobile?
A. It was two seated.
Q. Was it a late model at that time?
A. Yes, sir.
Q. I will ask you whether or not Robert Howell was along?
A. Yes, sir.
Q. And Dennis Thorne?
A. He was.
[fol. 184] Q. I will ask you whether or not these two women from Decatur were along—Did Dorothy Garth go?
A. No, sir.
Q. How about Bernice Moore?
A. No, sir.
Q. Did you know those two women then?
A. No, sir.
Q. Who else went?
A. No one left my home with us.
Q. Two days before you all left Jesse asked your Mother for your hand in marriage?
A. Yes, sir.
Q. And your Mother denied it?

A. I didn't hear it.

Q. What date did you all get married in Mississippi?

A. April 16th, or 15th.

Q. April 16th or 15th—I show you this certificate to refresh your recollection; it says 'State of Mississippi Marriage License', and ask you if, in your opinion, that is Jesse Blackburn's marriage license and your marriage license? For the record, can you read?

A. Yes, sir.

Q. Is that the marriage license?

A. This is one.

Q. I will ask you whether or not you all married in Mississippi, and were married by a man—Rev. J. W. Wilson?

A. Yes, sir.

Q. Do you remember what day of the week April 15, 1948 was?

A. It was Friday.

Q. To refresh your recollection, I show you a 1948 calendar and refer to the month of April and ask you what day does the 15th of April come on?

A. On this calendar it is on Thursday.

Q. And that is the date, I believe, that appears on the license?

A. Yes, but we married on Friday, and it was April 15 or April 16 one, but it is on the record in Mississippi.

Q. Where were you at when Jesse proposed to you?

A. I was at home.

Q. Was anybody in the room with you and him at that time?

A. Not that I remember.

[fol. 185] Q. I believe you testified on direct examination that you had noticed nothing out of the way in his conduct prior to your marriage?

A. Only the bereavement of his brother's death.

Q. Did he talk clearly to you?

A. He didn't talk very much.

Q. Did he talk rational or irrational?

A. To my judgment it was rational.

Q. How long had you known him prior to your marriage?

A. Oh, I met him the first of April; I don't know the exact date.

Q. Was that the same April that you married?
A. Yes, sir.
Q. Was that the first time you saw him?
A. Yes, sir.
Q. You had known him approximately two weeks when you married?
A. Yes, sir.
Q. How many dates did you have with him prior to your marriage?
A. I saw him several times.
Q. He came by your house on several occasions?
A. Yes, sir.
Q. Did he talk every time?
A. Yes, sir.
Q. Did he spend several hours on the occasions at your house?
A. I wouldn't say several hours.
Q. Did you see Dennis Thorne and Robert Howell with him—did they bring him?
A. Yes, sir.
Q. In that car that you went to Mississippi in?
A. No, they walked to my house.
Q. I believe you testified that you lived near Jack Thorne, who is a half-brother of Dennis Thorne?
A. I do.
Q. I will ask you whether or not in 1948 while Dennis—I mean Jesse—was in an institution, did you correspond with him?
A. Yes, I did.
Q. You wrote him letters?
A. Yes, sir.
Q. Did he write to you?
A. I received letters, some were typewritten and some were in pencil.
Q. Signed by Jesse?
[fol. 186] A. By the Doctor and Jesse.
Q. Have you had occasion to see Jesse's signature?
A. Oh; sure.
Q. Many or a few occasions?
A. I have had many occasions.
Q. I will ask you to look at the signature on this state-

ment received in evidence as State's Exhibit "A" on voir dire and Exhibit "C" on the main case, and I will ask you in your opinion whether or not the signature that reads 'Jesse Blackburn', basing your answer on your observation of him writing his name and signing his name to the letters you received—Is that his signature?

The defendant objects because the witness is not qualified to answer. Objection overruled. Defendant excepts.

Q. Answer 'Yes' or 'No'.

A. I can answer it this way—it looks like Jesse's writing.

The Defendant rests.

The case is with the State in rebuttal.

By Mr. Almon:

The State introduces the interrogatories, both the direct and the cross-interrogatories propounded to Dr. A. M. Richards, and also the commission to take the deposition and the affidavit to take the deposition, and to save time, we will dispense with reading the direct interrogatories except the portions showing the qualifications.

By Mr. Poellnitz: We want him to read it all if he reads any of it.

By Mr. Almon: All right, I was just trying to save time.

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[fol. 187] IN THE CIRCUIT COURT OF COLBERT COUNTY, ALABAMA.

Case No. 8521

and

Case No. 8522

STATE OF ALABAMA

vs.

JESSE BLACKBURN

AFFIDAVIT TO TAKE DEPOSITION

Before me, Leo Berryman, Jr., a Notary Public, in and for said State and County, personally appeared Jesse

Blackburn, who, being by me first duly sworn, deposes and says:

That he is the defendant in the above styled cases; that he desires to take the deposition of Dr. A. M. Richards who resides more than 100 miles from Tuscumbia, Alabama, the place where the above causes are set for trial, computed by the route usually travelled; and that the testimony of said witness is material for the defendant in the defense of this cause and his evidence to be secured by this deposition will be material evidence for the defendant on the trial of these causes and that said witness resides at Mt. Vernon in the County of Mobile, Alabama, and that the defense, or a material part thereof, depends exclusively on the testimony of the said witness.

This, the 6th day of April, 1953.

(S.) Jesse Blackburn, Defendant.

Sworn to and subscribed before me on this, the 6th day of April, 1953. (S.) Leo Berryman, Jr., Notary Public at Large.

Circuit Court

STATE OF ALABAMA,
Colbert County:

To Hon. John R. Higgins, of Mobile, Alabama, GREETING:

KNOW YE, that we, reposing confidence in your integrity, skill, and ability have appointed you Commissioner to take the testimony of Dr. A. M. Richards, a material witness for the defendant in the causes now pending in the Circuit Court of Colbert County, Alabama, brought by the State of Alabama under indictments against Jesse Blackburn, as defendant, and we hereby authorize and empower you to call and cause to come before you Dr. A. M. Richards, the [fol. 188] said witness and his deposition on oath to take as well for the state as for the defendant touching his knowledge of the matters and things in controversy in said causes; which disposition, when so taken shall be signed by said witness and certified by you as Commissioner acting herein; and you are further commanded, the deposition, when so taken with this commission to return under your

hand and seal to the Clerk of said court with all convenient speed.

Witness my hand this, the 15 day of April, 1953.

(S.) Mrs. W. Lee Stanley, Clerk.

Interrogatories to Dr. A. M. Richards

Now comes the defendant and propounds interrogatories to Dr. A. M. Richards, a witness whose testimony, when taken, will be material evidence for the defendant on the trial of the above causes.

First Interrogatory

Please state your name, age, address, occupation, and official title.

Answering the First Direct Interrogatory, he says:

My name is A. M. Richards. My occupation is physician. My age is in the early seventies. My address is Mt. Vernon, Alabama. I am a Staff Member at the Searcey Hospital there.

Second Interrogatory

Please briefly state your qualifications as a physician and your experience and training as such. What field of medicine have you specialized in? Please briefly relate your experience and training in the field of medicine in which you have specialized. How many years have you specialized in the treatment of insane persons and mental diseases? Please state approximately how many patients you have seen suffering with mental disorders and diseases during the years of your experience in treating such cases.

Answering the Second Direct Interrogatory, he says:

I have been in the insane hospital service for twelve years. I am a graduate of the Maryland Medical College, Baltimore, Maryland. I hold an MD degree. I have been in the practice of medicine for about forty years. For the past twelve years I have been a Staff member at the Searcey Hospital, at Mt. Vernon, Alabama. I have been a staff member of different hospitals. All of them were mental hospitals. At those hospitals I specialized in men-

[fol. 189] tal diseases. My practice was a general practice up until twelve years ago. In that twelve years, I served in the Wichita State Mental Hospital, of Wichita, Texas, until I came here, to this hospital at Mt. Vernon, Alabama. This is the Searcey Hospital, at Mt. Vernon, Alabama. In those twelve years I have dealt with mental cases exclusively I believe that I have specialized in the treatment of insane persons and mental diseases. I could not answer correctly how many patients I have seen suffering with mental disorders and diseases during the years of my experience in treating such cases. Roughly I would say many thousands.

Third Interrogatory

Were you in the year 1948 appointed or commissioned by or in pursuance of an order of the Circuit Court of Colbert County, Alabama, to investigate the insanity of one Jesse Blackburn, colored, under indictment for robbery and assault with intent to murder? If so, please state whether or not the attached paper marked Exhibit A to these interrogatories is a true and correct copy of the order under which you made such investigation.

Answering the Third Direct Interrogatory the witness says:

Yes, I was. Yes, the attached paper marked "Exhibit A" to the interrogatories is a true and correct copy of the order under which I made that investigation.

Fourth Interrogatory

Please state whether or not you made such investigation of the mental condition of the said Jesse Blackburn in conformity to the order identified as Exhibit A. Please also state the names of the other doctors who acted on such lunacy commission with you. Did you and the other doctors you have named report your findings from such investigation to the judge of the Circuit Court of Colbert County, Alabama? Was such report dated January 6, 1949, and is the attached paper marked Exhibit B to these interrogatories a true and correct copy of such report?

Answering the Fourth Direct Interrogatory, the witness says:

Yes, I made such investigation of the mental condition of the said Jesse Blackburn in conformity with the said order. The other doctors who served on the said lunacy commission with me were Dr. H. S. Rowe and Dr. Tarwater. Yes, the said Doctors Tarwater and Rowe reported to the Judge of the Circuit Court of Colbert County, Alabama, our findings from said investigation. Yes said report was dated January 6th, 1949. Yes, the paper attached [fol. 190] to the interrogatories and marked Exhibit B to said interrogatories is a true and correct copy of said report.

Fifth Interrogatory

Did you and the other doctors associated with you find as stated in said report: "From a study of his case and using information from several other mental hospitals where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged."? Did this part of your report relate to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of your said report?

Answering the Fifth Direct Interrogatory, the witness says:

Yes the other doctors and I found as stated in said report, that "from a study of his case and using information from several other mental hospitals where he has formerly been treated, it is our further opinion that he was insane at the time of the commission of the crime for which he is charged. Yes, that part of our report related to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of our said report. Yes, I have read that report. Yes, I signed it. Yes, I and the said other doctors associated with me found as stated in the said report, and that part of said report which is set out in quotation marks, commencing with the words, "From a study of his case and

using information'' and ending with the words ''commission of the crime for which he is charged'' did relate to Jesse Blackburn and to the indictments of robbery and assault with intent to murder which had been returned and were pending against him in Colbert County, Alabama, at the time of said report.

Sixth Interrogatory

Subsequent to your report of January 6, 1949, was there an order made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind? If so, please state whether or not the attached paper marked Exhibit C is a true and correct copy of said commitment order dated December 27, 1949. Please state whether or not Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29, 1948, and whether his commitment continued to October 7, 1952.

[fol. 191] Answering the sixth direct interrogatory, the witness says:

Yes, subsequent to our report of January 6th 1949, there was an order made by the Judge of the Circuit Court of Colbert County, Alabama, permanently committing said Jesse Blackburn to the Alabama State Hospitals at the Mt. Vernon branch thereof until restored to his right mind. Yes, the report attached to the sixth direct interrogatory, is a true and correct copy of said commitment order dated December 27th 1949. Yes, said Jesse Blackburn was first committed to the Alabama Insane Hospitals on July 29th 1948, and his commitment continued to October 7th 1952.

Seventh Interrogatory

Please state all the pertinent additional facts and further information and opinions relating to the mental condition of Jesse Blackburn during the month of April, 1948, and during the period from January 1, 1948, to July 29, 1948.

Answering the Seventh Direct Interrogatory, he says:

I have none, other than the above.

(The following appeared at the end of the direct interrogatories):

(S.) Mitchell & Poellnitz, Attorneys for Defendant.

The name of John R. Higgins of Mobile, Alabama, is suggested as a fit and suitable person to take down the answers to the foregoing interrogatories and it is requested that a commission issue to him for that purpose.

(S.) C. A. Poellnitz.

A copy of the foregoing has been personally served on W. L. Almon, Solicitor on this 6th April 1953.

(S.) C. A. Poellnitz, Atty. for Defendant.

By Mr. Almon:

The State does not offer any of the Exhibits thereto.

The defendant objects—if the gentlemen offer the interrogatories, they have to offer it all under the law.

By Mr. Almon: Your Honor ruled out Exhibits "A" and "C", and "B" you let go in.

By the Court: That's right. You offer the interrogatories and answers to the interrogatories but not the Exhibits attached thereto?

By Mr. Almon: Yes, sir.

[fol. 192] The defendant objects to the offering of the interrogatories without the Exhibits "A", "B" and "C".

By the Court: Exhibits "A" and "C" are not admitted in evidence but Exhibit "B" is admitted in evidence with the deposition.

Defendant excepts.

EXHIBIT "B"

STATE OF ALABAMA,
Mobile County:

To: Honorable Robert H. Hill, Judge of Circuit Court, Colbert County, Tuscumbia, Alabama.

Under the provisions of an Act of the Legislature of Alabama approved April 17, 1933, (Title 15, Section 425, Code of Alabama of 1940), one Jesse Blackburn, colored, indicted for robbery and assault with intent to murder, was admitted to the Searcy Hospital on July 29, 1948 un-

der order of Honorable Robert H. Hill, Judge of Circuit Court, Colbert County, Alabama, Tuscumbia, Alabama, for observation and report as provided in the Act referred to above.

In compliance with the provisions of the Act, the Superintendent of the hospital appointed Doctor H. S. Rowe, Assistant Superintendent and Doctor A. M. Richards, Assistant Physician, who associated with the Superintendent constitute the undersigned commission. After having the said Jesse Blackburn under our study and observation continually since the above date of admission we desire to submit the following report:

It is the opinion of each of us, and our opinion jointly and collectively, that the said, Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948 was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged.

Under the provisions of the act referred to above, we understand that with the rendering of this report our obligation and that of the Searcy Hospital, one of the Alabama State Hospitals, has been discharged and that if it the wish of the court that the said, Jesse Blackburn be detained longer in this institution as a patient, it would be necessary for this court or some court of jurisdiction to issue a commitment or order for the further detention of the said, Jesse Blackburn in the Searcy Hospital.

Awaiting your further order or that of the Court or the Sheriff of Colbert County.

Respectfully submitted,

Signed and executed this 6th day of January 1949 at the Searcy Hospital, at Mt. Vernon, Alabama.

(S.) J. S. Tarwater, M. D., Acting Superintendent, (S.) Harry S. Rowe, M. D., Assistant Superintendent, (S.) A. M. Richards, M. D., Assistant Physician.

[fol. 193] The State introduces the cross-interrogatories propounded to Dr. A. M. Richards.

Cross-interrogatories to Dr. A. M. Richards

Now comes the Plaintiff and propounds cross-interrogatories to the defendant's witness, Dr. A. M. Richards:

Interrogatory No. I.

Dr., please state over what period of time you personally observed Jesse Blackburn.

Answering the First Cross-Interrogatory, the witness says:

From the time he came in until he left this hospital.

Interrogatory No. II

Give the time from the beginning of your observation of Jesse Blackburn and the date he was last seen and observed by you.

Answering the second cross-interrogatory, he says:

About three and a half years.

Interrogatory No. III

How often did you see Jesse Blackburn and observe him?

Answering the third cross-interrogatory, he says:

He was up on the criminal ward and he was such a nuisance until I didn't see him often. Dr. Head had looked after him mainly.

Interrogatory No. IV

How long or how many hours did you see and observe Jesse Blackburn each day you saw him?

Answering the fourth cross-interrogatory, he says:

Well, that is impossible to answer just how long, ten or fifteen minutes at a time.

Interrogatory No. V

How long and over what period of time did he exhibit abnormal thinking and abnormal behavior?

The defendant objects to interrogatory No. 5 on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Answering the fifth cross-interrogatory he says:

None.

Interrogatory No. VI

Is it not a fact that at times Jesse Blackburn's thinking was normal?

[fol. 194] The defendant objects to interrogatory No. 6 on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Answering the sixth cross-interrogatory, he says:

He had been normal ever since I first saw him, mentally.

Interrogatory No. VII

Is it not a fact that at times Jesse Blackburn's behavior was normal?

The defendant objects to interrogatory No. 7 on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Answering the seventh cross-interrogatory, he says:

Yes, at times his behavior was normal.

Interrogatory No. VIII

Is it not a fact that Jesse Blackburn's thinking and also his behavior was more normal than abnormal?

The defendant objects to interrogatory No. 8 on the grounds that it is not confined to any specific time and does

not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

Answering the eighth cross-interrogatory, he says:

Yes, it was more normal than abnormal.

Interrogatory No. IX

Is it not a fact that at times Jesse Blackburn was rational in his thinking?

The defendant objects to interrogatory No. 9 on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County. Objection overruled. Defendant excepts.

Answering the ninth cross-interrogatory, he says:

Certainly.

Interrogatroy No. X

Is it not a fact that at times Jesse Blackburn was rational in his behavior?

The defendant objects to interrogatory No. 10 on the grounds that it is not confined to any specific time and does not relate to any specific time this man was charged with a crime in Colbert County.

Objection overruled. Defendant excepts.

[fol. 195] Answering the tenth cross-interrogatory, he says:

Yes.

Interrogatory No. XI

Is it not a fact, Dr. Richards, from your observation of Jesse Blackburn, that he, at times, had lucid intervals?

Answering the eleventh cross-interrogatory, he says:

I do not think so.

Interrogatory No. XII

Is it not a fact that your report in writing dated January 6th, 1949, to Honorable Robert M. Hill, Judge of the

Circuit Court, Tuscumbia, Alabama, is based partly upon your observation of Jesse Blackburn, and also partly upon information from several other mental hospitals where he was treated?

Answering the twelfth cross-interrogatory, he says:

Yes.

Interrogatory No. XIII

When did you first see Jesse Blackburn?

Answering the thirteenth cross-interrogatory, he says:

The date he came in here.

Interrogatory No. XIV

What was his mental condition on April 19, 1948?

Answering the fourteenth cross-interrogatory, he says:

Normal.

Interrogatory No. XV

What was his mental condition on May the 8th, 1948?

Answering the fifteenth cross-interrogatory, he says:

Good.

Interrogatory No. XVI

Is it not a fact that at times Jesse Blackburn suffered psychotic episodes?

Answering the sixteenth cross-interrogatory, he says:

Not at any time I saw him.

Interrogatory No. XVII

Over what period of time did these psychotic episodes last—how many hours?

Answering the seventeenth cross-interrogatory, he says:

None.

[fol. 196] Interrogatory No. XVIII

State in ordinary lay language what a psychotic episode is.

Answering the eighteenth cross-interrogatory, he says:

I could not answer that.

Interrogatory No. XIX

When did Jesse Blackburn enter the Searcy Hospital at Mount Vernon, Alabama?

Answering the nineteenth cross-interrogatory, he says:

About 1948, I believe.

Interrogatory No. XX

When was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

Answering the twentieth cross-interrogatory, he says:

November 12th 1952.

Interrogatory No. XXI

Upon what condition was Jesse Blackburn discharged from Searcy Hospital at Mount Vernon, Alabama?

Answering the twenty-first cross-interrogatory, he says:

Because we thought he needed to go back for trial.

(The following appeared at the end of the cross-interrogatories):

W. L. Almon, Solicitor of the

11th Judicial Circuit, Sol. for Plaintiff

(The following Certificate appeared at the end of the Answers to the Interrogatories):

IN THE CIRCUIT COURT OF COLBERT COUNTY, ALABAMA

Cases numbered 8521 and 8522

STATE OF ALABAMA,

*vs.*

JESSE BLACKBURN, Defendant

CERTIFICATE

I, John R. Higgins, as commissioner under a commission issued to me on April 15th 1953, by Mrs. W. Lee Stanley, the Clerk of the Circuit Court of Colbert County, Alabama

in the above entitled causes, do hereby certify that acting under the said commission, I did cause the witness, Dr. A. M. Richards, to come before me at Searcy Hospital (an Alamaba State Hospital) at Mount Vernon, Mobile County, Alabama, on April 16th 1953 at 10-45 o'clock AM; that said witness was duly sworn by me and was examined on the direct and cross-interrogatories propounded in writing to the said witness; that said testimony was taken in short-[fol. 197] hand by Rit M. Smith, as stenographer appointed by me to take said testimony in shorthand; that the said deposition was, on oath, taken as well for the State as for the Defendant, touching his knowledge of the matters and things in controversy in said causes, and that the said stenographer thereupon transcribed his said testimony on the typewriter, and that the foregoing is a true and correct transcript of the testimony so given by the witness.

I further certify that I am neither of counsel nor of kin to either party to the causes, nor am I in any manner interested in the result thereof.

And I do herewith return this deposition with my said commission to the Clerk of the Court under my hand and seal; as witness my hand and seal this the 18th day of April, 1953.

John R. Higgins, As Commissioner (Seal).

| | |
|---|---|
| Commissioner's fee for taking said deposition | $20.00 |
| and Stenographer's fee for services | 20.00 |
| Total | $40.00 |

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Jack Thorne, a witness for the State, in Rebuttal, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Almon:

Q. Jack, when did you first see Jesse Blackburn?

Defendant objects because it is not in rebuttal and is repetition. Objection overruled. Defendant excepts.

Q. In April, 1948; when did you first see him?

A. Well, when he was down to my home.

Q. Was it something like a week or ten days before it is said that Mr. Wright was robbed?

Defendant objects——

A. Yes, sir, it was before that.

Defendant objects because it is not in rebuttal and is repetition. Objection overruled. Defendant excepts.

Q. Where was he when you first saw him?

A. At my home.

Q. How long did he stay there that first time?

[fol. 198] A. Well, I don't know to tell the truth; it was one or two nights before they left.

Q. Did he talk to you?

A. Yes, sir.

Q. Did he stay several hours with you?

A. Yes, sir.

Q. Your brother, Dennis, was there?

A. Yes, sir.

Q. And Robert Howell?

A. Yes, sir.

Q. State whether or not he talked rational?

A. Yes, sir.

Q. Was his behavior rational?

A. Yes, sir.

Q. The next time you saw him where was he?

A. At my home too.

Q. At that time state whether or not he talked rational?

A. Yes, sir.

Q. How long did you talk to him the second time?

A. Well, they spent the night there and some part of the day.

Q. State whether or not he and his wife spent the night with you the first night they were married?

A. Yes, sir.

Q. State whether or not you had a wedding party for them?

A. Yes, sir, but they didn't spend the night.

Q. Were many people there?

A. No, not many.

Q. Who all was there?

A. My family and Fannie's family and a few more—not many.

Q. Did you talk to him on that occasion and observe him?

A. Yes, sir.

Q. State whether or not he was rational that time?

A. Yes, sir.

Q. Did you see him on Saturday before it is alleged that Mr. Wright was robbed on Monday?

A. Yes, sir.

Q. Along about four o'clock?

[fols. 199-200] A. Yes, sir.

Q. How long did you see him on that occasion?

A. I don't know exactly what time of evening he come back to my house.

Q. Did he eat there?

A. No, sir.

Q. In your judgment how long did he stay there?

Q. Two or three hours.

Q. Did you talk to him?

A. Yes, sir.

Q. Did you observe him?

A. Yes, sir.

Q. State whether or not he was rational?

A. Yes, sir.

By a Juror: Your Honor, will you ask the witness if he knows what rational means?

By the Court: Jack, the Solicitor asked if he talked rational—do you know what rational means?

By the Witness: I think it means good mind or with a mind that is right.

By the Court to the Juror: Anything else?

By the Juror, No, sir.

Cross-examination.

By Mr. Poellnitz:

Q. You didn't examine Jesse Blackburn carefully, did you? You didn't question him?

A. No, sir.

Q. Did you discuss any particular conversation with him?

A. No, sir.

Q. You didn't know anything about his history?

A. No, sir, not a thing.

Q. You didn't know he had been in mental institutions?
A. No, sir.
Q. You weren't observing him for the purpose of testifying here, were you?
A. No, sir.
The State rests.
The Defendant rests.
This was all the testimony offered on the trial of this case.

[fol. 201] Court's Oral Charge

Gentlemen of the Jury, the State charges by Grand Jury Indictment in this case that the defendant, Jesse Blackburn, by one count in the Indictment, was guilty of robbery in that he took the money described in the Indictment, the personal property of Thomas Clyde Wright, from the person of Mr. Wright, and against his will by violence to his person, or by putting him in such fear that Mr. Wright unwillingly parted with the money.

The charge comes here, Gentlemen, by Grand Jury Indictment. The Indictment, however, is not a circumstance in law or evidence to be taken against the defendant; it is merely the means by which the defendant is charged with an offense and is brought into Court later to be tried by a petit jury, which, of course, in this case is you.

In answer to that charge, Gentlemen, the defendant pleads not guilty. He also pleads not guilty by reason of insanity, and I shall dwell later in this charge on the matter of insanity. When the defendant pleads not guilty, this places the burden on the State in the first place to prove the defendant guilty from the evidence of the offense charged beyond a reasonable doubt and to a moral certainty.

The defendant in this case, like the defendants in every criminal case tried in the State of Alabama, is presumed to be innocent when he comes into Court and that presumption of innocence attends the defendant when he enters upon the trial and it stays with him as a matter of law and evidence until the State has proved the defendant guilty beyond a reasonable doubt and to a moral certainty from the evidence in the case.

Proving the defendant guilty beyond a reasonable doubt and proving it to a moral certainty mean about the same thing in law. A reasonable doubt does not mean a mere possible doubt, or an imaginary doubt, or a fanciful doubt, or a capricious kind of a doubt, and a moral certainty does not mean an absolute and positive certainty because everything relating to affairs that take place between us human beings on earth and depending for proof on evidence from the mouths of human beings may be open to some sort of possible or imaginary doubt. The doubt upon which you are authorized to acquit the defendant then, Gentlemen, must be an actual doubt and a substantial doubt, a doubt for which a good reason can be given and it must grow out of the evidence or it may grow out of a lack of sufficiently satisfying evidence. Stated in another way, Gentlemen, a reasonable doubt of guilt to require an acquittal is not [fol. 202] a vague or a fanciful or a speculative doubt, but it is such a doubt as reasonable and fair-minded and honest men would entertain under a conscientious consideration of all the facts and circumstances of the case as shown by the evidence.

Now, Gentlemen, the defendant is charged with the offense of robbery. Gentlemen, there are three elements of robbery which the State must prove from the evidence beyond a reasonable doubt. First, it must be shown that there was a felonious intent, and a felonious intent means an intention of stealing or appropriating someone else's property to one's own use and going away with it and permanently converting it to one's own use. The second element is force, and Gentlemen, there are two kinds of force —constructive force and actual force. Constructive force is used by putting in fear, or putting in such fear so that some person unwillingly parts with his property, and actual force is force used by violence. And then, Gentlemen, the third element is that by that means—that is, force—there was a taking and carrying away of property of another from his person and against his will. So, Gentlemen of the Jury, in this case if the State of Alabama from the evidence has proven to you beyond a reasonable doubt that the defendant robbed Mr. Wright, and that he had a felonious intent, and that he used force and such force is that Mr. Wright unwillingly parted with his property, and

third, that the defendant took his property and carried it away and made it the defendant's property rather than Mr. Wright's property, then Gentlemen, if those three elements have been proven from the evidence beyond a reasonabl doubt, it would be your duty to find the defendant guilty unless you were to find him not guilty by reason of insanity, which I will charge you about later.

Now, Gentlemen, the State contends in this case that the defendant, either by himself or with some other person, committed the robbery, and that if the defendant did not commit the robbery that the defendant aided or abetted someone else in committing the robbery. The law is, Gentlemen, that if any person aids or abets another person in the commission of an offense that that person is just as guilty as the person who actually commits the offense, provided that is proven.

The words aid and abet mean about the same thing. They comprehend all assistance rendered by acts, words of encouragement or support, or presence for the purpose of giving help to another person, should it become necessary. So, Gentlemen of the Jury, you first look at all the evidence and determine from it whether the defendant was guilty of committing the offense of robbery, or of aiding or [fol. 203] abetting some other person in the commission of the offense of robbery, and if you are satisfied beyond a reasonable doubt that he was, then it would be your duty to convict him as charged. If you are not satisfied of those facts from the evidence beyond a reasonable doubt, then, Gentlemen, you could not convict him of robbery, but you would acquit him. Now, Gentlemen, the State introduced in evidence here a written paper allegedly made by this defendant after the alleged commission of the offense, and the defense—the defendant—has introduced in evidence some papers containing statements of a record regarding the Veterans Bureau of the United States Government relative to this defendant and his stay in those institutions. That paper allegedly signed by the defendant, Gentlemen, was allowed to come into the evidence but the Court would like to point out to you that its weight and credibility and whether it is true is solely for you gentlemen to determine. In looking at the alleged paper you gentlemen should ask yourselves from the evidence the following questions:

If the defendant signed the paper, was he insane at the time he signed it? If the defendant signed the paper, did he have the mental capacity to know and to remember that which he was saying in the paper? Ask yourselves also, Gentlemen, did the defendant have sufficient understanding to comprehend the obligation of an oath and to be able to give correct answers to the questions put to him.

Now, Gentlemen, I say the weight and credibility to be given the statement is for you to determine, and you ask yourselves those questions in determining how much weight and credence you will attach to the statement. If the defendant was insane and did not have the mental capacity to know and remember what he was saying, and to make correct answers to the questions asked him, then, of course, Gentlemen of the Jury, the statement would have no weight or credibility because of that condition of his mind. If, on the other hand, you find from the evidence that he did understand the questions put to him and did have mental capacity to make correct answers, then it would be a different proposition. What your duty would be in that case is to look at the paper and determine what weight and credibility you will give it. The same is true as to the records introduced, the Veterans Administration records—the weight and credence to be given those records is solely for you to determine.

Now, Gentlemen, if you determine in the case that the alleged confession is not to be given any weight and credence, then, Gentlemen of the Jury, the State would be relying upon circumstantial evidence in this case, and I [fol. 204] should live to define to you what circumstantial evidence is. Circumstantial evidence, Gentlemen, is the proof of certain facts and circumstances in a given case from which a jury may infer other connected facts which usually and reasonably follow according to the common experiences of mankind. The law says regarding circumstantial evidence there should not be a conviction on circumstantial evidence unless to a moral certainty it excludes every other reasonable hypothesis except that of the guilt of the accused; no matter how strong the circumstances are, they do not come up to the full measure of proof which

the law requires if they can be reasonably reconciled with the theory that the defendant is innocent.

I have referred to the fact that depositions have been introduced in evidence and the law is that if a witness resides one hundred miles from the place of trial, he cannot be required to attend court in person, but his testimony can be taken by deposition. There are some depositions introduced in evidence and they are to be taken by you as though the witness were here and testified. The weight and credence to be given those depositions is for you to determine and only you.

Gentlemen, the defendant has entered a plea of not guilty by reason of insanity, and though the burden of proof is on the State of proving the defendant guilty of the offense charged beyond a reasonable doubt; yet, when we come to the plea of insanity the burden of proof is on the defendant to prove his plea of insanity to the reasonable satisfaction of the jury.

The issue of insanity, Gentlemen, to which you should direct your attention is—What was the state of the defendant's mind on the day or at the time of the alleged offense. Insanity occurring after the alleged offense would, of course, not be a defense to the crime charged, but if insanity occurred after the alleged offense, it is the duty of the Court in certain instances to see that the defendant is examined and to not have his trial as long as he is certified to be insane. The inquiry that you make is not insanity at this time or at other times—it is at the time of the alleged offense. Insanity existing at the time of the commission of an alleged criminal offense when proven to the reasonable satisfaction of the Jury is a complete defense to an indictment charging that offense, but insanity occurring subsequently or later, of course, that would be no answer to that indictment.

Now, Gentlemen, the law is in this State that every person who is over fourteen years of age is presumed to be sane and presumed to be responsible for their acts. The [fol. 205] test of responsibility where the defense of insanity is set up in a criminal case is defined as follows: First—and you ask yourselves these questions from the evidence in the case—First, was the defendant at the time of the commission of the alleged crime, as a matter of fact,

afflicted with a disease of the mind so as to be either idiotic, or otherwise insane? Second, if such be the case, did he know right from wrong as applied to the particular act in question? If he did not have such knowledge, he is not legally responsible, and if you are reasonably satisfied of that from the evidence and that he had the diseased mind I have just spoken about, then, Gentlemen, you would find him guilty by reason of insanity. Third, if he did have such knowledge; that is, to know right from wrong, the law says he may nevertheless not be legally responsible if the two following conditions concur: First, if, by reason of the duress of such mental disease, he had so far lost the power to choose between the right and wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed; and second, and if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it solely. Stated differently, Gentlemen, the rule regarding insanity and responsibility for crime is as follows: To sustain a defense of insanity, the evidence must establish that at the time of the commission of the crime the defendant was afflicted with a diseased mind to the extent that—first, he did not know right from wrong as applied to the particular act in question; and second, if he did have such knowledge, he, by reason of the duress of such mental disease had so far lost the power to select the right and to avoid doing the act in question as that his free agency was at the time destroyed; and third, that, at the same time, the crime was so connected with such mental disease, in relation to cause and effect, as to have been the product of it solely. So, Gentlemen of the Jury, it would be your duty to apply that rule in this case, and if you find that at the time of the commission of the offense the defendant was insane as that has been defined to you, it would be your duty to find the defendant not guilty by reason of insanity.

The law further is, Gentlemen, that if it be shown by the evidence in a case that a person is a person who is insane, but has lucid intervals; that is, intervals of time when his mind is clear and when he is not mentally incompetent, and if such a person commits an offense, the law presumes that

[fols. 206-210] it was committed during a lucid interval and not during a time when he was actually insane.

You look at all the facts and circumstances and evidence in the case and determine whether or not this defendant was insane as we have defined it to you at the time of the commission of the alleged offense, or when it is alleged to have been committed.

If you find the defendant guilty, Gentlemen, it would be your duty to fix the amount of punishment. The punishment provided by the law for the offense of robbery is either death by electrocution or imprisonment in the State Penitentiary for a period of years not less than ten years. If you find the defendant guilty and fix the death penalty, the form of your verdict would be: "We, the Jury, find the defendant guilty as charged in the indictment and fix his punishment at death by electrocution."

If you find the defendant guilty and do not fix that penalty but fix some punishment by imprisonment in the State penitentiary, the form of your verdict would be: "We, the Jury, find the defendant guilty as charged in the indictment and fix his punishment at ... years imprisonment in the State penitentiary", and if that be your verdict, place in the blank the number of years which you fix, any number of years not less than ten years.

If the State has failed to prove to you, Gentlemen, beyond a reasonable doubt that the defendant is guilty of the offense charged, it would be your duty to acquit the defendant, and in that event, the form of your verdict would be: "We, the Jury, find the defendant not guilty."

If, Gentlemen of the Jury, you find the defendant not guilty by reason of insanity, then the form of your verdict would be: "We, the Jury, find the defendant not guilty by reason of insanity." Whichever one of the forms of verdict you agree upon put it in writing and let your duly elected foreman sign it as foreman and knock on the door and let us know.

These charges, Gentlemen, I give you at the request of the defendant, not to be taken as changing or varying or contradicting the oral charge, but are to be taken along with that charge, and with that charge, constitute the law applicable to your decision of the facts:

[fols. 211-212] VERDICT

(The Jury came out at six minutes until seven o'clock, p. m.)

By the Court: Gentlemen of the Jury, have you agreed on a verdict?

Juror: Yes, sir.

By the Court: The verdict of the Jury in this case is "We, the Jury, find the defendant guilty as indicted and set his sentence at twenty years with recommendation that he serve these twenty years" and is signed by the Foreman, Mr. Isbell.

Gentlemen, you mean by that verdict, do you, twenty years imprisonment in the State penitentiary?

Juror: Yes, sir.

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[fol. 212-a] Reporter's Certificate to foregoing transcript omitted in printing.

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[fol. 213] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 214] IN THE ALABAMA COURT OF APPEALS, OCTOBER TERM, 1955-56

JESSE BLACKBURN

*v.*

STATE

Appeal From Colbert Circuit Court

JUDGMENT—November 16, 1954

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that

the judgment of the Circuit Court be in all things affirmed. It is also considered that the Appellant pay the costs of appeal of this Court and of the Circuit Court.

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[fol. 215] In the Court of Appeals of Alabama

Opinion—November 16, 1954

Price, Judge.

To an indictment charging him with robbery, defendant plead not guilty and not guilty by reason of insanity. His trial resulted in a verdict of guilty and a sentence of twenty years in the penitentiary.

The State's evidence was to the effect that Thomas Clyde Wright operated a rolling store for one W. N. Greenhill. On April 19, 1948, Mr. Wright drove the store over his regular route. He started up Crowell Hill, on the Allsboro Road, in Colbert County, after dark. At that time he had in his possession a bill fold containing approximately $76.00 belonging to Mr. Greenhill and a bill fold containing $51.00 of his own money. As he put his truck in "double low" he saw someone coming off the bank toward the road with something in his hand that looked like a gun. He remembered nothing further until he regained consciousness in a hospital two weeks later. At that time he had neither the bill folds nor the money.

Mr. and Mrs. Hubbard and J. C. James were on Crowell Hill and saw the rolling store stopped on the road. A maroon colored Buick, bearing an Illinois license plate, was parked by it. These witnesses heard a "rumbling noise," like the sounds of a struggle from inside the store. Mr. James testified two colored men got into the Buick and drove away. Mr. James and Mr. Hubbard armed themselves and returned to the scene about thirty minutes later. They found Mr. Wright at the rear of the store, trying to scotch it so it would not roll down the hill. He was badly beaten, dazed and "out on his feet." They found a blood-stained tire tool and two hats inside the store.

Deputy Sheriff Stanford arrived at Crowell Hill between 10:30 and 11:30 that night and found two hats and a tire

tool and blood inside the store. The articles found by him were introduced in evidence.

Dr. Gary testified he examined Mr. Wright at the hospital on the night of the alleged robbery. He was unconscious and bleeding from the ears and nose. X-rays made later showed multiple linear fractures on the skull, caused by a blunt instrument used with great force.

At the time of the alleged crime appellant was a resident [fol. 216] of Chicago, Illinois. About a week prior thereto he came to Alabama in company with Dennis Thorne and Robert Howell for the purpose of burying his deceased brother. The trip was made in a maroon Buick with an Illinois tag. The prosecuting witness testified he had seen these men and the automobile at the home of Dennis Thorne's brother on the Allsboro Road. One of the men bought a package of cigarettes from him and paid for it with a twenty dollar bill. On April 16, 1948 appellant married Fanny Rogers in Iuka, Mississippi. There was a wedding party that night at Jack Thorne's house. The couple spent that night at Leon Fuqua's and the next afternoon appellant left with Howell and Dennis Thorne. The next time his bride saw him was in May, 1948, when he was in the Colbert County jail.

According to the State's evidence, on May 8, 1948, after appellant was arrested and brought to Colbert County from Gary, Indiana, he confessed the crime to deputy sheriff Stanford. The confession was reduced to writing and signed by appellant two days later. The confession was admitted in evidence as State's exhibit "A" on voir dire examination for the purpose of determining defendant's mental capacity at the time of making the confession. It was also admitted in evidence before the jury as State's exhibit "D." In the confession the defendant detailed the movements of the trio from the time they left Chicago until the night of the robbery; told of his marriage to Fanny Rogers; said there was a conspiracy between the three men to rob the driver of the rolling store, which defendant said he subsequently tried to prevent. He stated that at the time of the robbery, "I carried small wrench which I now identify as the one I used. Shirt I was wearing that night I identify as same which had blood on it

and was washed out by Burniece Moore the night we speng in Nashville. The hat officers found in Rolling Store I identify it as the one Robert Hal was wearing at the time of the robbery, but this hat belonged to me. I now have been presented with a heavy tire tool which officers said was found in Rooling Store, I identify it as the one Robert Hal used to hit the driver of the rooling store, three tiines on the head." In the confession defendant stated he flagged the store down on the steep part of the hill. Robert Howell rushed up behind defendant as he stepped on the running board. After Robert Howell struck the driver defendant got the change from his right front pocket while Robert Howell was going through his other pockets. After [fol. 217] leaving the scene defendant helped to count the money and received $28.00 as his share and he disposed of some checks that were in the bill folds.

For the defendant, Thomas J. Grace, a field examiner for the office of the Regional Attorney of the Veterans' Administration, identified certain records showing that at the time of the commission of the alleged crime defendant was a 25 year old negro man with a history of mental disorders. On July 1, 1944, at Drew Field, Florida, he was diagnosed as unfit for military service because of psychosis. The Report of Board of Medical Officers was that he had "recurrent periods of marked confusion and over-activity, assaultiveness with catatonic posturing, teeth grinding followed by severe headache and complete amnesia concerning his behavior, constitutes a threat to others when subject to such attacks," and recommended his transfer to a Veterans Administration facility for further treatment.

On September 8, 1944, appellant was admitted to a Veterans Administration hospital at Danville, Illinois, from Drew Field, with diagnosis of dementai praecox, simple type, and a history of hallucinations and defective judgment and insight. There, on September 11, 1944, he was given a diagnosis of "psychosis, manic depressive, manic phase." On February 14, 1948, the Danville Veterans hospital placed defendant on a ten-day leave of absence with his sister. He failed to return at the end of ten days and was placed on a 90 day trial visit. On May 24, 1948, not having returned, he was formally discharged from the hospital. His diagnosis on discharge was schizophrenic reaction,

paranoid type. The alleged offense occurred prior to the discharge from the hospital. Also a report of an examination by Dr. M. L. Moore, neuropsychiatrist, April 22, 1949, with a diagnosis "Schizophrenic reaction, paranoid type. Insane, incompetent and should be placed in insane hospital." And a rating sheet by the Veterans' Administration, showing defendant's rating to be, "Schizophrenic reaction, paranoid type, incompetent from 5-24-48."

The record discloses that after appellant's arrest he showed signs of insanity in the jail and was admitted to Searcy Hospital for observation and report under the provisions of Articles 1 and 2 of Title 15, Code 1940, on July 29, 1948, and remained there until November 12, 1952, when he was released in the custody of Colbert County authorities as sane and competent to stand trial.

[fol. 218] On the trial defendant testified the signatures on the bottom of each page of the purported statement to deputy sheriff Stanford appeared to be his signatures but the statement was not true and he had no recollection of having made or signed it. He did not remember being questioned by the sheriff or his deputy and did not remember that anything in the statement took place. He testified he did not commit the offense charged. He also testified he did not remember being in Colbert County in 1948; did not remember being in jail there in 1948 and that he did not remember getting married.

Defendant introduced depositions of Drs. Tarwater and Rowe, which were also introduced on voir dire, and are commented upon further on in this opinion.

Appellant's counsel argue: "The errors which we primarily urge for reversal hinge upon the trial court's actions in dealing with the alleged written confessions and certain allegedly confessory statements of the appellant."

After proper predicate was laid the State offered the confession in evidence.

The defendant objected to the introduction of the confession because the corpus delicti had not been proven and because the defendant could be shown not to have had the mental capacity to be a witness on May 8, 1948.

The defendant, on voir dire, introduced depositions of Dr. Harry S. Rowe, assistant Superintendent of Searcy Hospital, and Dr. J. S. Tarwater, Superintendent of Al-

bama State Hospitals. The report of the lunacy commission appointed July 26, 1948, to investigate the sanity of defendant was attached as exhibit "B" to each of said depositions. This report was signed by Drs. Tarwater, Rowe and A. M. Richards, and recites in part:

"It is the opinion of each of us, and our opinion jointly and collectively, that the said Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948, was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged."

[fol. 219] Dr. Rowe stated in answer to interrogatories that defendant was suffering from schizophrenia of the paranoid type; in his opinion he was insane at the time of the commission of the crime.

Dr. Tarwater stated that the commission, from a study of the reports and the findings in the case, immediately after hospitalization, was of the opinion that defendant was mentally ill and incompetent during April 1948, and during the period from January 1, 1948 to July 29, 1948.

The State introduced the cross-interrogatories of Drs. Rowe and Tarwater and the depositions of Dr. A. M. Richards, a staff physician at Searcy Hospital, and a member of the lunacy commission.

Dr. Rowe stated that at times while in the hospital defendant's thinking and behavior were normal, and that both his thinking and behavior were more normal than abnormal, and that he had lucid intervals.

Dr. Tarwater stated defendant exhibited abnormal thinking and abnormal behavior for several months after his admission to the hospital. In his opinion defendant was mentally incompetent on April 19, 1948, and was mentally ill and mentally incompetent on May 8, 1948.

Dr. Richards stated in answer to direct interrogatories that he, Dr. Tarwater and Dr. Rowe found, as stated in the report, that defendant was insane at the time of the

commission of the crime for which he was charged. In answer to cross-interrogatories he stated that defendant had been normal mentally since he first saw him; that at times his behavior was normal; his thinking and his behavior was more normal than abnormal; at times he was rational in his thinking and behavior; he did not think defendant had lucid intervals; his mental condition on April 19, 1948, was normal, and his mental condition on May 8, 1948, was good; that defendant did not have psychotic episodes at any time that he saw him.

Deputy Sheriff Stanford then testified for the State that he questioned defendant in the Colbert County jail on May 8, 1948, for five or six hours and returned after supper and continued the questioning. The greater part of the time he was alone with the defendant, but the Sheriff and deputy Bo Riner were present some of the time. Defendant answered questions like any normal person he has examined. He told his name, address, his past occupations and the date he left Chicago. The witness reduced the [fol. 220] statement to writing and read it to defendant in the presence of the Sheriff, Mr. River, and Mrs. Craig, the notary public, and the defendant signed it. There was nothing about defendant's appearance to indicate that he was a sick man. No threats or offers of reward were made to induce defendant to sign the statement.

The State again offered the confession as State's Exhibit "A" only for the purpose of the voir dire hearing. Defendant objected to its introduction because it was taken over a period of hours; it could not reflect the continuity of thought on the part of the witness; could not determine in any way his mental capacity to make the statement; it is otherwise shown to be involuntary; the corpus delicti has not been proven; the statement is incompetent and illegal, and by express statement of Mr. Stanford the statement was put down in his words and not those of defendant. The court overruled the objection, stating that the confession was being received at that time only for the court's inspection on the question of whether it should be admitted later for the jury's consideration. Defendant duly excepted.

The jury returned to the court room and the State again laid a predicate for the introduction of the confession. On cross-examination deputy Stanford testified that on May 8,

1948, he talked with the defendant from 1:00 to 6:00 and from 7:00 until 10:00 or eleven that night. Most of the time they were in a room 4 X 6 or 6 X 8; part of the time the sheriff and another deputy were present; they might have worn their guns and badges; after staying in jail for some time defendant began to show signs of insanity. The witness also testified the defendant talked rationally and gave sensible answers at the time the confession was made. His eyes were clear and he did not appear to be nervous. The State then offered the confession in evidence as exhibit "D" to the witness' testimony. The court overruled defendant's objection and defendant excepted.

Appellant contends the facts testified to by the witness Standford show that the confession was involuntary, and its admission before the jury was reversible error.

There was no testimony tending to contradict the evidence on the part of the State that the confession was not induced by duress or promise. The fact that a confession was made while the maker was under arrest does not render it inadmissible. *Johnson* v. *State*, 242 Ala. 278, 5 So. 2d. 632. Nor is the confession rendered inadmissible by virtue [fol. 221] of the fact that the officers to whom the confession was made were armed. *McElroy* v. *State*, 75 Ala. 9; *Hornsby* v. *State*, 94 Ala. 55, 10 So. 522; *Flanigan* v. *State*, 247 Ala. 642, 25 So. 2d 685; *Phillips* v. *State*, 248 Ala. 510, 28 So. 2d 542.

"Likewise, for a confession to be voluntary it is not necessary that it proceed wholly at the suggestion of the prisoner. Levison v. State, 54 Ala. 520. Nor is it rendered involuntary because not verbatim as related by the prisoner. If its transcription is substantially as related and affirmed by the prisoner as correct, it is none the less admissible. 20 Am. Jur. 427, Sec. 492." *Dennison* v. *State*, 259 Ala. 424, 66 So. 2d 552.

In answer to counsel's contention that the confession was involuntary because of defendant's mental incompetence, we quote further from *Dennison* v. *State*, supra:

"In this connection it is to be observed that the voluntariness of a confession is not affected by the fact that the accused was not in full possession of her faculties, although that is a circumstance to be considered by the jury in weighing its verity. Vinzant v. State, 28 Ala. App. 220, 180

So. 736; Smith v. State, 25 Ala. App. 297, 145 So. 504; Finch v. State, 81 Ala. 41, 1 So. 565; 22 C. J. S., Criminal Law, Sec. 828, page 1451.

"We have treated of this latter principle in the recent case of Redwine v. State, 258 Ala. 196, 61 So. 2d 724, and there cited numerous authorities. The rule was deducted that the mere fact that accused was not in full possession of his mental faculties when the connfession was made would not render it inadmissible, but only affected its weight to be accorded by the jury; or was provable merely to support other evidence that the statement was not voluntary. To render such confession inadmissible on that ground alone the mania must have been such that the accused was either and 'idiot' or a 'lunatic during lunacy.'"

Of course, the duty, of determining whether a confession is voluntary rests within the discretion of the trial court, and its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears. We conclude the wide discretion vested in the court is not shown here to have been abused and there was no error in admitting the confession in evidence.

Counsel argue: "There is in this record (other than in the alleged confession) a total lack of evidence, either direct or circumstantial, that there was a taking and carrying away of property from the person or from within the [fol. 222] presence of the prosecuting witness," therefore, there was not sufficient proof of the corpus delicti to justify the admission in evidence of the confession.

"Circumstantial evidence may afford satisfactory proof of the corpus delicti and if facts are presented from which the jury may reasonably infer the crime has been committed, the question must be submitted to the jury, and other evidence tending to implicate the accused is thereby rendered admissible. * * *" *Phillips* v. *State*, 248 Ala. 510, 28 So. 2d 542.

In 46 Am. Jur., Robbery, p. 162, Sec. 51, it is stated: "Under the rule that all the elements of the corpus delicti may be proved by presumptive or circumstantial evidence, which prevails in most jurisdictions, it has been held that the commission of a robbery is sufficiently established by

proof that the victim had valuables on his person at the time of being assaulted, beaten, and rendered unconscious, and that they were missing when he regained consciousness." See also 77 C. J. S., Robbery, Corpus delicti, p. 495, Sec. 47.

The testimony of the prosecuting witness, given before the confession was admitted in evidence, afforded reasonable inference of the commission of the crime and was sufficient proof of the corpus delicti to permit the introduction of the confession.

We find no merit in the argument advanced by appellant's counsel that reversible error was committed by the court in admitting the confession as State's exhibit "A" on voir dire. We quote from counsel's argument: "It is an inescapable conclusion that hearing the reading of the confession on voir dire influenced the court to admit it on the case in chief. The court should have denied a hearing or examination of the alleged confession at this point and ruled on its admissibility subsequently in the light of pertinent and competent evidence. In admitting the confession on voir dire, the court prejudiced the rights of appellant and committed error warranting reversal."

Of course, the sole question before the court on voir dire was whether the confession was admissible because voluntary or inadmissible because involuntary, and if the accused had other "pertinent and competent evidence" on the question of its inadmissibility it was incumbent upon him to present it before the court determined that question. After the court admits the confession the evidence given before the jury regarding the manner in which the confession was obtained is for the purpose of enabling the [fol. 223] jury to determine its weight and value as evidence.

In *Vernon v. State*, 239 Ala. 593, 196 So. 96, it is said: "Extrajudicial confessions of guilt by an accused on trial for crime are prima facie involuntary, and the burden rests on the State to overcome this prima facie infirmity by evidence satisfactory to the court trying the case that the confession was voluntarily made, before such confession can be received in evidence. It is the right of the accused to controvert evidence offered in laying such predicate by cross-examination, or by evidence aliunde, but such counter-

vailing evidence impeaching the predicate to be successful must be offered on the void dire, before the confession is admitted. Lockett v. State, 218 Ala. 40, 117 So. 457; Cook v. State, 16 Ala. App. 390, 78 So. 306; Pope v. State, 183 Ala. 61, 63 So. 71; Jackson v. State, 83 Ala. 76, 3 So. 847.

"If such countervailing evidence is not offered until after the preliminary question of the admissibility of the confession is passed on by the court it goes to the jury on the credibility of the confession only. Lockett v. State, supra; Cook v. State, supra."

As heretofore stated, the witness Stanford testified he found two hats and a tire tool inside the rolling store. Defendant's confession referred to and identified a wrench and a tire tool used in beating the victim and a hat belonging to defendant but which was worn by Robert Howell at the time of the robbery. The continued custody of these articles was accounted for by the State, and the articles together with the testimony of witness Stanford as to the defendant's identification of them at the time of making the confession were properly admitted in evidence in corroboration of the confession, *Phillips* v. *State*, 248 Ala. 510, 28 So. 2d 542; *Vernon* v. *State*, supra, and was not error as against the contention that "the statements elicited from Stanford with reference to these exhibits called for separate confessions for which a predicate should have been made, but was not laid."

There was sufficient evidence of defendant's guilt to make it a question for the jury; hence there was no error in refusing the requested general charge. The trial court and the jury saw the witnesses and heard the evidence and we cannot say the verdict was so contrary to the great weight of the evidence as to put the trial court in error [fols. 224-225] for refusing to grant the motion for a new trial.

The judgment of the lower court is affirmed.

Affirmed.

IN THE ALABAMA COURT OF APPEALS

APPLICATION FOR REHEARING AND DENIAL THEREOF—March 15, 1954

Comes Jesse Blackburn, appellant in the above styled cause, and moves this Honorable Court to grant unto him a rehearing in said cause and to reverse, revise and hold for naught its judgment rendered on November 16, 1954, and affirming the conviction of the appellant by the Circuit Court of Colbert County, Alabama, and to enter an order reversing said conviction and affording appellant a new trial in this cause.

March 15, 1955.

It is ordered that the application for rehearing be and the same is hereby overruled.

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[fol. 226] IN THE SUPREME COURT OF ALABAMA

JESSE BLACKBURN, Appellant

*vs.*

STATE OF ALABAMA, Appellee

PETITION FOR WRIT OF CERTIORARI—Filed March 30, 1956

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Comes the Appellant, Jesse Blackburn, by and through his attorneys, Mitchell & Poellnitz, and respectfully petitions this Honorable Court to review, revise, reverse, and hold for naught that certain judgment of the Court of Appeals for the State of Alabama rendered on to-wit, November 16, 1954, wherein Jesse Blackburn was Appellant, and The State of Alabama was appellee, which said judgment affirms the judgment of the Circuit Court of Colbert County, Alabama.

Your Petitioner avers that application to said Court of Appeals for a rehearing of said cause and a brief in support thereof were duly filed by your Petitioner on to-wit,

December 1, 1954, and that said application for rehearing was overruled on March 15, 1955.

Your Petitioner further shows unto Your Honor that the Court of Appeals erred in affirming and failing to reverse said cause in the following way, to-wit:

[fol. 227] (1) In that the Court of Appeals decided that the alleged confession of the said Jesse Blackburn was not induced by duress or promise.

(2) In that the Court of Appeals decided that the alleged confession of the said Jesse Blackburn was not involuntary because of the said Jesse Blackburn's mental incompetence.

(3) In that the Court of Appeals decided that the trial Court did not abuse its discretion in the admission in evidence of the alleged confession of the said Jesse Blackburn.

(4) In that the Court of Appeals decided that the testimony of the prosecuting witness before the admission in evidence of the alleged confession of Jesse Blackburn afforded reasonable inference of the commission of the alleged crime and was sufficient proof of the corpus delicti of the alleged crime to permit introduction of the alleged confession of the said Jesse Blackburn.

(5) In that the Court of Appeals decided that there was no error by the trial Court in admitting in evidence the alleged confession of the said Jesse Blackburn on voir dire examination relating to the admissibility of the said alleged confession as a part of the State's case in chief.

(6) In that the Court of Appeals decided that there was no error in refusing the general charge requested on the trial of the cause by the said Jesse Blackburn.

In view of the above, your Petitioner respectfully requests that this Petition for Writ of Certiorari be granted, directing the Court of Appeals to reverse and revise the judgment of the Circuit Court of Colbert County, Alabama, and set aside the order of the Court of Appeals affirming said cause.

[fol. 228] Your Petitioner also respectfully requests that the affirmance of the Court of Appeals of the judgment of the Circuit Court of Colbert County, Alabama, and the

order of the Court of Appeals of March 15, 1955, overruling Petitioner's application for rehearing be withheld pending a final decision on this petition by this Honorable Court.

Submitted herewith is a brief in support of this petition.

Respectfully submitted, Mitchell & Poellnitz, By: (S.) W. H. Mitchell, Jr., Attorneys for Appellant.

As one of the Attorneys for Appellant and Petitioner, I hereby certify that I have delivered a copy of the foregoing petition to the Honorable Attorney General of The State of Alabama on this March 30, 1955.

(S.) W. H. Mitchell, Jr., One of Attorneys for Appellant and Petitioner.

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[fol. 229] IN THE SUPREME COURT OF ALABAMA

JESSE BLACKBURN *vs.* THE STATE OF ALABAMA

ORDER DENYING WRIT OF CERTIORARI AND DISMISSING PETITION—April 12, 1956

Comes the Petitioner, Jesse Blackburn, by Attorneys, and the Petition for Writ of Certiorari to the Court of Appeals being submitted on briefs and duly examined and understood by the Court.

It is considered and ordered that the Write of Certiorari be and the same is hereby denied, and that the Petition be and the same is hereby dismissed at the cost of the Petitioner, for which costs let execution issue accordingly.

Writ Denied: Petition Dismissed.

[No Opinion written], Merrill, J.

Livingston, C. J., Lawson and Goodwyn, JJ., concur.

[fol. 230] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

APPLICATION FOR REHEARING—Filed April 27, 1956

Comes Jesse Blackburn, Appellant in the above styled cause, and moves this Honorable Court to grant unto him a rehearing in said cause and to reverse, revise and hold for naught its judgment rendered on April 12, 1956, denying the petition of the Appellant for writ of certiorari to the Court of Appeals of Alabama, and to enter an order granting the petition for writ of certiorari, directing the Court of Appeals to reverse and revise the judgment of the Circuit Court of Colbert County, Alabama, and set aside the order of the Court of Appeals affirming said cause. Appellant further moves tha Court to stay or suspend the execution of the judgment of the said Circuit Court and the said Court of Appeals affirming same pending the consideration of this motion for rehearing.

Submitted herewith is brief and argument in support of said motion.

(S.) Mitchell and Poellnitz, By C. A. Poellnitz, Attorneys for Appellant.

CERTIFICATE

A copy of the foregoing motion, together with the attached brief and argument, has been mailed postage prepaid to the Attorney General of the State of Alabama, addressed to him at the Judicial Building in Montgomery, Alabama, on this the 26th day of April, 1956.

(S.) C. A. Poellnitz, Attorney for Appellant.

[fol. 231] IN THE SUPPREME COURT OF ALABAMA

[Title omitted]

ORDER OVERRULING APPLICATION FOR REHEARING—June 21, 1956

It is ordered, that the application for rehearing filed by the Petitioner in this cause on April 27, 1956, after being duly examined and considered by the Court, be and the same is hereby overruled. [No opinion written.]

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[fol. 232] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 233] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 234] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 426

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed December 3, 1956

The petition herein for a writ of certiorari to the Court of Appeals of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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No. 426

Office - Supreme Court, U.S.
FILED
SEP 15 1956
JOHN T. FEY, Clerk

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

JESSE BLACKBURN,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA.

W. H. MITCHELL, JR.,
TRUMAN HOBBS,
Counsel for Petitioner.

306-311 Professional Center,
Montgomery, Alabama.

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IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

JESSE BLACKBURN,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA.

Jesse Blackburn prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Alabama, entered in the above entitled case on November 16, 1954. Subsequent to this judgment of the Court of Appeals of Alabama, petitioner unsuccessfully sought review in the Supreme Court of Alabama.

### OPINIONS BELOW.

The opinion of the Circuit Court of Colbert County, Alabama, is unreported. The opinion of the Court of Appeals of Alabama (R. 215) is reported at 88 So. 2d 199. The decision of the Supreme Court of Alabama refusing to grant the petition for certiorari (R. 229) and its decision denying the application for a rehearing (R. 231) is reported at 88 So. 2d 205.

## JURISDICTION.

The judgment of the Court of Appeals of Alabama was rendered on November 16, 1954 (R. 214). Petitioner applied to the said Court of Appeals for a rehearing, which was denied (R. 224). Petitioner thereupon petitioned the Supreme Court of Alabama for a writ of certiorari to review the judgment of the Court of Appeals of Alabama. The petition for certiorari was denied on April 12, 1956. Petitioner made application for rehearing to the Supreme Court of Alabama. This application was denied on June 21, 1956 (R. 231). The effect of the action of the Supreme Court of Alabama was to make final the judgment of the Court of Appeals of Alabama in so far as the state remedies for petitioner were exhausted. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1257.

Petitioner in the trial court and in the Court of Appeals contended that his alleged confession was involuntary. In the trial court petitioner repeatedly objected to the efforts of the State of Alabama to introduce into evidence his alleged confession. Petitioner objected that the confession was not voluntary and that petitioner lacked the mental competence to make a voluntary confession (R. 26, 75, 88, 94, 95, 96, 97, 117). The trial court admitted the confession into evidence and the petitioner excepted to the ruling of the trial court (R. 81).

The question of the voluntary nature of the confession was fully presented and ruled upon by the trial court on the motion for new trial (R. X, XI, XV, XVI). It was argued to the Alabama courts in seeking appellate review. The Court of Appeals of Alabama stated (R. 221):

> "Of course, the duty of determining whether a confession is voluntary rests within the discretion of the trial court, and its decision allowing a confession in evidence will not be disturbed unless an abuse of such

discretion appears. We conclude the wide discretion vested in this court is not shown here to have been abused and there was no error in admitting the confession in evidence."

## QUESTIONS PRESENTED.

1. Does a conviction based on a confession obtained after nine hours of questioning from one over leave from an insane hospital and adjudged mentally incompetent at the time of his release from said hospital and subsequently adjudged insane by the sanity board appointed by the State of Alabama to examine him and adjudged probably insane at the time of his confession by members of the same sanity board, offer that fundamental fairness required by the due process of law clause of the 14th Amendment of the Constitution of the United States?

2. Was the federal question adequately raised below and passed upon by the Alabama courts?

## STATUTES INVOLVED.

There are no statutes involved. Section 1 of the 14th Amendment of the United States Constitution is involved.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT.

Petitioner was charged with the capital offense of robbery. He pleaded not guilty and not guilty by reason of insanity. He was tried, convicted and sentenced to twenty years imprisonment. His conviction was based on an alleged confession, which petitioner has contended at every stage of his trial and appeal was obtained involuntarily.

Petitioner is a young Negro, 25 years of age at the time of his alleged crime on April 19, 1948. He had been a member of the armed forces during World War II, and was discharged in 1944 as unfit for military service because of a permanent mental disability (R. 124, 125). Pursuant to the recommendation of the Army Medical Board, petitioner was transferred to an insane hospital with a diagnosis of dementia praecox, simple type, and a history of hallucination and defective judgment and insight (R. 126).

Petitioner remained under treatment in this hospital from September, 1944, until February, 1948. In September, 1944, petitioner was adjudged 50% mentally incompetent. In November, 1946, he was adjudged 100% mentally incompetent (R. 132, 133). On February 14, 1948, petitioner was released from the hospital for a ten-day leave in the care of his sister. When petitioner did not return from this leave, he was automatically discharged from the hospital on May 24, 1948. His medical record states that on his discharge "the diagnosis of schizophrenic reaction, paranoid type, remains unchanged, and he was considered incompetent at the time of his release" (R. 128).

In April, 1948, while petitioner was several days over leave from the insane hospital, he left his home in Chicago to attend a funeral in Alabama. The crime with which

petitioner was charged occurred while he was on this trip to Alabama.

Petitioner was arrested in Indiana and was brought to Colbert County, Alabama. On May 8, 1948, petitioner allegedly confessed to the crime for which he was convicted. The crime was a brutal one committed in a rural area and involved armed assault on the white operator of a rolling country store. One of the deputy sheriffs, who questioned petitioner and who wrote the alleged confession, testified that petitioner "talked sensible" at the time of his confession (R. 87). This same deputy conceded that thereafter while petitioner was still in jail awaiting trial, he observed the behavior of the petitioner which "showed signs of insanity" (R. 85). The Sheriff of Colbert County thereupon reported to the Circuit Judge of Colbert County that there existed reasonable grounds for believing petitioner insane (R. 31). The Circuit Judge of Colbert County had petitioner examined as to his sanity by three reputable local physicians and other witnesses. These physicians and witnesses concurred in the view that there was reasonable ground for believing petitioner insane (R. 31).

Petitioner was thereupon on July 26, 1948, delivered to the Superintendent of the Alabama State Hospitals, who was directed to convene a commission on lunacy to determine petitioner's mental condition. On January 6, 1949, the lunacy commission made a unanimous adjudication that petitioner was insane at the time he was delivered to the state mental hospital in July, 1948. The Commission was further unanimous in its judgment that petitioner "was insane at the time of the commission of the crime for which he is charged" (R. 34). Two of the three doctors composing the commission on lunacy stated that in their opinion he was mentally ill and incompetent on May 8, 1948 (R. 40-41, 54), this being the date of the alleged

confession. The testimony of the third doctor on the commission was somewhat confused. He testified, however, that he did not think petitioner had lucid intervals (R. 66). He also testified that petitioner was probably insane on April 19, 1948 (R. 62), but on cross-examination he stated that he though petitioner's mental condition on April 19, 1948, was normal (R. 67).

On the findings of the Commission of lunacy, the Circuit Court of Colbert County permanently committed petitioner to the Alabama State Hospital for treatment of the insane until "restored to his right mind" (R. 35). Petitioner remained under treatment in the insane hospital for more than four years, from July, 1948, to October 7, 1952, at which time he was ajudged mentally competent to stand trial and was returned to Colbert County (R. 35, 36). At the time of petitioner's trial, he had spent his entire adult life in an insane hospital except for a few weeks of absence without leave.

Petitioner testified that he had no recollection of events leading up to the crime, the crime itself, his arrest in Indiana, his detention in the Colbert County jail, his confession, and finally that he had no recollection of his commitment to the Alabama State Hospital or the early months or years of treatment at said hospital (R. 164, 165, 166). Petitioner denied the truth of the confession, acknowledged that the signature on the confession appeared to be his, but stated that he could not recall anything about the confession. Petitioner's prior medical history attested that he suffers recurrently from "complete amnesia concerning his behavior" (R. 124).

Petitioner's confession was not even purportedly transcribed in petitioner's words or in question and answer form.

Petitioner's alleged confession on May 8, 1948, was obtained after nine hours of questioning by one or more law

enforcement officers who were coming "in and out" (R. 84, 85). The questioning was uninterrupted except for a break of approximately one hour while the examining officers went to supper (R. 184). Most of the questioning took place in a room four feet by six feet or six feet by eight feet, in which were petitioner and as many as three law enforcement officers (R. 84). The law enforcement officers could not recall whether they were wearing or exhibiting their guns at the time of the questioning (R. 86). Petitioner allegedly confessed at approximately 11 o'clock at night.

Petitioner objected to the introduction into evidence of the alleged confession on the ground that it was not voluntary, that it was not shown that petitioner had the mental capacity to be a witness, that it affirmatively appeared that petitioner was insane at the time of the making of the alleged confession (R. 26, 88). When the State of Alabama offered petitioner's alleged confession into evidence, petitioner's counsel objected as follows:

> "The defendant objects because the corpus delicti has not been proven; and the defendant can be shown not to have had the mental capacity to be a witness on May 8, 1948, and we offer to show that in conformity with Section 439, Title 7 of the Code of Alabama, with reference to the statement the gentlemen is talking about, and we want to offer to prove those facts before the court rules on the admissibility of the statement, and we more specifically offer to show in evidence by depositions of Dr. Tarwater and Dr. Rowe that this man did not have the metnal capacity on May 8, 1948, to be a witness and make a statement, and we object on the further ground that no predicate has been laid, and it is illegal and incompetent, and we offer to prove that on May 8, 1948 this man was suffering from a mental disease known as Schizophrenic of the Paranoid type, a form of Dementia

> Praecox, and that such disease deprived him of the mental capacity to be a witness against himself, and we offer to show through the testimony of the duly qualified officer of the Veterans' Administration, who is also custodian of the records of the Veterans' Administration, that this man had also suffered from the disease since 1944, and that subject to order of this court, a lunacy commission was appointed to observe the defendant and such commission reported to this court that the man was mentally incompetent on May —or before May 8, 1948. We offer to offer this on Voir Dire as to whether or not it was a voluntary statement" (R. 26).

After the voir dire, the trial court admitted the confession into evidence over petitioner's objection (R. 81).

These objections to the introduction of the confession were repeated many times at the trial (R. 26, 88, 94, 95, 96, 97, 100, 117). Despite petitioner's objections, the trial court admitted the confession into evidence and made the determination that the confession was voluntary. Based on the alleged confession, a conviction was obtained, and petitioner was sentenced to serve twenty years in prison.

In the Court of Appeals of Alabama petitioner argued that the trial court committed reversible error in admitting the alleged confession. The Court of Appeals affirmed the conviction, stating that the duty of determining whether a confession is voluntary rests within the discretion of the trial court, "and its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears." **Blackburn v. State**, 88 So. 2d 199, 205. The Court of Appeals concluded by stating that the wide discretion vested in the trial court was not shown to have been abused and there was no error in admitting the confession in evidence. Petitioner applied

for a rehearing before the Court of Appeals and the petition for rehearing was denied.

Petitioner petitioned the Supreme Court of Alabama for certiorari and the petition was denied. 88 So. 2d 205. Petitioner sought a rehearing before the Supreme Court of Alabama and the Supreme Court of Alabama denied the application for a rehearing.

## REASONS FOR GRANTING THE WRIT.

I.

This case raises fundamental and important questions as to the protection extended by the Fourteenth Amendment of the Constitution of the United States to incompetent or insane persons whose convictions rest on alleged confessions obtained while such persons are suffering from insanity or mental incompetency.

The Court of Appeals of Alabama was of the opinion that such wide discretion is vested in the trial court in its determination of whether a confession is voluntary that it could not be shown that the court's discretion was abused in admitting petitioner's confession. If there was no abuse of discretion in this case it is difficult to conceive of a circumstance under which appellate review can give meaning to the decisions of this Court that convictions obtained by the use of involuntary confessions must be set aside as not according the defendant due process of law.

If petitioner were mentally competent it is conceivable that despite his prolonged questioning in a box-like room by three law enforcement officers who were "in and out," his confession could be viewed as voluntary. Petitioner was not mentally competent. He had spent the four years prior to his arrest in a Government hospital under treatment for his insanity. At the time the alleged crime was committed

petitioner was over-leave from the mental hospital on a ten-day release in the custody of his sister. Every doctor who examined petitioner from 1944 to 1949—and there were many—agreed that petitioner was mentally incompetent or insane. Even petitioner's untrained jailers conceded that petitioner showed signs of insanity after his confession while still confined to jail awaiting trial (R. 85). Dr. Moorer, a doctor for the State of Alabama, examined petitioner in April, 1949, and diagnosed petitioner as a schizophrenic, paranoid type, insane, incompetent, and stated that he should be placed in an insane hospital (R. 129).

The lunacy commission appointed to examine petitioner by the Circuit Court Judge was unanimously of the opinion that petitioner was insane at the time the crime was committed in April, 1948, and when it examined petitioner in July, 1949. The severity of petitioner's mental derangement may be judged from the fact that he was required to remain under treatment in an Alabama insane hospital for an additional four years after being placed in the custody of the lunacy commission. The doctors who examined petitioner and were questioned on the subject stated that it was their opinion that petitioner was most probably insane and incompetent at the time of his alleged confession (R. 40, 41, 54).

Does the "confession" of such a defendant after nine or ten hours of questioning constitute a voluntary confession? Can a conviction based on such a confession be valid within the due process provision of the United States Constitution? We submit that the use of petitioner's confession is repugnant to "that fundamental fairness essential to the very concept of justice." **Lisenba v. California**, 314 U. S. 219, 236, 62 S. Ct. 280.

Under the law of Alabama, confessions are prima facie inadmissible, and the state has the burden of overcoming the presumption of law that they are obtained by undue

influence, and they must affirmatively appear to have been voluntarily made before they are admissible. **McCulars v. State**, 208 Ala. 182, 94 So. 55; **Baird v. State**, 215 Ala. 27, 109 So. 761. In Alabama the trial judge has the duty of determining whether a confession is voluntary. **Hines v. State**, 72 So. 2d 296.

Can it be that petitioner's confession was voluntary as a matter of law? Even in **Stein v. New York**, 346 U. S. 156, this Court emphasized that the test of whether a confession is voluntary is different for the normal defendant and the mentally deranged defendant. In the **Stein** case this Court stated:

> "The limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What would be overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal." **Stein v. New York**, supra, at page 185.

And again in the **Stein** case, at page 186, this Court emphasized that those defendants "were not young, soft, ignorant, or timid. They were not inexperienced in the ways of crime or its detection, nor were they dumb as to their rights."

Apply the plain implication of this language from the **Stein** case to petitioner. Petitioner was only twenty-five years of age at the time of his alleged arrest. He had spent the previous four years of his life in a government insane institution which adjudged him 100% mentally incompetent and insane at the very time of his arrest and alleged confession. What was "the power of resistance" of such a defendant?

In **Harris v. South Carolina**, 338 U. S. 68, 71, this Court regarded as important that the defendant was systematically questioned, that he was not advised of his rights,

that there was an absence of friends or disinterested persons, and this Court regarded his character as significant in viewing the question of whether the defendant's confession could be viewed as voluntary.

Petitioner testified at the trial. He could give no information concerning the alleged confession, however, because he had no recollection of any events for many months after his arrest (R. 166, 167, 168). This was an understandable circumstance in view of petitioner's prior history of suffering recurrently from "complete amnesia concerning his behavior" (R. 124).

> "Manifestly, if the defendant is of tender age or weak intellect, his will may be the more easily overcome by the same circumstances than that of one who is more intelligent or more mature. For this reason greater attention should be paid to such a defendant's situation and surroundings." **Curry v. State**, 203 Ala. 239, 82 So. 489, 493.

We submit that the conviction of this colored boy who had at the trial date spent the last eight years of his life in an insane asylum and who was adjudged insane almost immediately before and immediately after his confession and who was adjudged probably insane at the time of his confession by the only two doctors who examined him and were questioned on the subject, should not stand when based on a "confession" obtained from such a defendant after nine or ten hours of questioning by a series of law enforcement officers under the circumstances revealed by this record. Such convictions are miscarriages of justice "of such gravity and magnitude that they cannot be expected to happen in an enlightened system of justice, or be tolerated if they do." **Stein v. U. S.**, 346 U. S. 156, 181.

II.

At the time the State of Alabama offered petitioner's alleged confession in evidence, petitioner through his attorneys objected on the ground that it was not a voluntary confession and that petitioner lacked the mental capacity to be a witness against himself (R. 26, 88, 94, 95, 96, 97, 100, 117). On petitioner's motion for a new trial, he assigned several grounds for his motion challenging the introduction of the confession into evidence on the ground that it was not voluntary (R. X, XI, XII). The motion for new trial was overruled by the trial court.

Petitioner appealed his conviction to the Alabama Court of Appeals again challenging the admission into evidence of the confession on the ground it was not voluntary and that petitioner lacked mental capacity to give a confession. The Alabama Court of Appeals held that the duty of determining whether a confession is voluntary rests within the discretion of the trial court, and "its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears." **Blackburn v. State**, 88 So. 2d 199, 205. The Court of Appeals concluded by stating that the wide discretion vested in the trial court was not shown to have been abused and there was no error in admitting the confession in evidence.

Petitioner made application for a rehearing to the Court of Appeals, but the application was denied.

Petitioner petitioned the Supreme Court of Alabama for certiorari and urged that the Court of Appeals erred in not holding said confession to be involuntary (R. 226). This petition was denied. Petitioner applied for a rehearing to the Supreme Court of Alabama on its denial of the petition for certiorari, but the application for rehearing was denied. **Blackburn v. State of Alabama**, 88 So. 2d 205.

In none of the proceedings in the Alabama courts did petitioner's counsel invoke by name the 14th Amendment of the Constitution of the United States. Counsel for petitioner, however, did raise at every stage of the proceedings the objection to the admission of an involuntary confession which this Court has held in many decisions is a violation of the 14th Amendment to the United States Constitution.

In **Emspak v. United States**, 349 U. S. 190, the defendant sought to invoke the privilege against self incrimination. He did so by a reference to the First and Fifth Amendments to the Constitution. The Government contended that such a reference was too vague, that petitioner should have stated the nature of the objection under these Amendments upon which he relied. Conversely in this case, petitioner clearly stated his objection in a fashion so that any court could understand. In **Emspak** the defendant did not articulate the ground of his objection but gave the short rendition of the objection by referring to "the First and Fifth Amendments." This Court held that "no ritualistic formula or talismanic phrase" is required. **Emspak v. United States**, 349 U. S. 190, 194.

In **Quinn v. United States**, 349 U. S. 155, the defendant sufficiently invoked the Constitutional privilege against self incrimination by stating that he was invoking the same objections as were raised by another witness. This other witness had invoked the First and Fifth Amendments. The Government contended that witness Quinn's objection did not adequately inform the Congressional committee to whom the objection was addressed as to the basis of the objection. This Court answered this contention in plain language:

> "If an objection to a question is made in any language that a committee may reasonably be expected to understand as an attempt to invoke the privilege, it

must be respected both by the committee and a court in a prosecution under Sec. 192." QUINN v. U. S., 349 U. S. [redacted], 155, 162, 163.

In the instant case petitioner fully and clearly articulated the ground of his objection "in language that a committee (a court) may reasonably be expected to understand." In the **Emspak** and **Quinn** cases it is conceivable that the Congressional committees did not know the precise objections of the witnesses in invoking the First and Fifth Amendments. This Court recognized this fact in suggesting that the Committee could have questioned the witnesses and clarified any ambiguity. In the instant case there was no ambiguity. It is inconceivable in the light of this Court's many decisions that a court of law could be ignorant of the Constitutional protection involved in the challenge to a confession as involuntary.

The Alabama courts have fully considered the question of whether this petitioner's confession was voluntary. Their answer that it was voluntary and one upon which petitioner's conviction could rest should not be allowed to stand.

Respectfully submitted,

.....

W. H. MITCHELL, JR.,

.....

TRUMAN HOBBS,
Counsel for Petitioner.

**Certificate.**

I certify that I have served a copy of the foregoing petition for certiorari upon the Honorable John Patterson, Attorney General of the State of Alabama, by depositing the same in a United States Post Office with first class postage prepaid addressed to him at the Judicial Building, Dexter Avenue, Montgomery, Alabama, on this the 13 day of September, 1956.

Truman Hobbs

Truman Hobbs.

## APPENDIX.

Nov. 16, 1954.

The State of Alabama—Judicial Department.

THE ALABAMA COURT OF APPEALS.

October Term, 1954-1955.

8 Div. 407.

Jesse Blackburn

v.

State.

Appeal From Colbert Circuit Court.

Price, Judge.

To an indictment charging him with robbery, defendant plead not guilty and not guilty by reason of insanity. His trial resulted in a verdict of guilty and a sentence of twenty years in the penitentiary.

The State's evidence was to the effect that Thomas Clyde Wright operated a rolling store for one W. N. Greenhill. On April 19, 1948, Mr. Wright drove the store over his regular route. He started up Crowell Hill, on the Allsboro Road, in Colbert County, after dark. At that time he had in his possession a billfold containing approximately $76.00 belonging to Mr. Greenhill and a billfold containing $51.00 of his own money. As he put his truck in "double low" he saw someone coming off the bank toward the road with something in his hand that looked like a gun. He remembered nothing further until he regained consciousness in a hospital two weeks later. At that time he had neither the billfolds nor the money.

Mr. and Mrs. Hubbard and J. C. James were on Crowell Hill and saw the rolling store stopped on the road. A

maroon colored Buick, bearing an Illinois license plate, was parked by it. These witnesses heard a "rumbling noise" like the sounds of a struggle from inside the store. Mr. James testified two colored men got into the Buick and drove away. Mr. James and Mr. Hubbard armed themselves and returned to the scene about thirty minutes later. They found Mr. Wright at the rear of the store, trying to scotch it so it would not roll down the hill. He was badly beaten, dazed and "out on his feet." They found a blood-stained tire tool and two hats inside the store.

Deputy Sheriff Stanford arrived at Crowell Hill between 10:30 and 11:30 that night and found two hats and a tire tool and blood inside the store. The articles found by him were introduced in evidence.

Dr. Gary testified he examined Mr. Wright at the hospital on the night of the alleged robbery. He was unconscious and bleeding from the ears and nose. X-rays made later showed multiple linear fractures on the skull, caused by a blunt instrument used with great force.

At the time of the alleged crime appellant was a resident of Chicago, Illinois. About a week prior thereto he came to Alabama in company with Dennis Thorne and Robert Howell for the purpose of burying his deceased brother. The trip was made in a maroon Buick with an Illinois tag. The prosecuting witness testified he had seen these men and the automobile at the home of Dennis Thorne's brother on the Allsboro Road. One of the men bought a package of cigarettes from him and paid for it with a twenty-dollar bill. On April 16, 1948, appellant married Fanny Rogers in Iuka, Mississippi. There was a wedding party that night at Jack Thorne's house. The couple spent that night at Leon Fuqua's and the next afternoon appellant left with Howell and Dennis Thorne. The next time his bride saw him was in May, 1948, when he was in the Colbert County jail.

According to the State's evidence, on May 8, 1948, after appellant was arrested and brought to Colbert County from Gary, Indiana, he confessed the crime to Deputy Sheriff Stanford. The confession was reduced to writing and signed by appellant two days later. The confession was admitted in evidence as State's Exhibit "A" on voir dire examination for the purpose of determining defendant's mental capacity at the time of making the confession. It was also admitted in evidence before the jury as State's Exhibit "D." In the confession the defendant detailed the movements of the trio from the time they left Chicago until the night of the robbery; told of his marriage to Fanny Rogers; said there was a conspiracy between the three men to rob the driver of the rolling store, which defendant said he subsequently tried to prevent. He stated that at the time of the robbery, "I carried small wrench which I now identify as the one I used. Shirt I was wearing that night I identify as same which had blood on it and was washed out by Burneice Moore the night we spent in Nashville. The hat officers found in rolling store I identify it as the one Robert Hal was wearing at the time of the robbery, but this hat belonged to me. I now have been presented with a heavy tire tool which officers said was found in rolling store, I identify it as the one Robert Hal used to hit the driver of the rolling store three times on the head." In the confession defendant stated he flagged the store down on the steep part of the hill. Robert Howell rushed up behind defendant as he stepped on the running board. After Robert Howell struck the driver defendant got the change from his right front pocket while Robert Howell was going through his other pockets. After leaving the scene defendant helped to count the money and received $28.00 as his share and he disposed of some checks that were in the billfolds.

For the defendant, Thomas J. Grace, a field examiner for the office of the Regional Attorney of the Veterans'

Administration, identified certain records showing that at the time of the commission of the alleged crime defendant was a 25-year-old negro man with a history of mental disorders. On July 1, 1944, at Drew Field, Florida, he was diagnosed as unfit for military service because of psychosis. The Report of Board of Medical Officers was that he had "recurrent periods of marked confusion and over-activity, assaultiveness with catatonic posturing, teeth grinding followed by severe headache and complete amnesia concerning his behavior, constitutes a threat to others when subject to such attacks," and recommended his transfer to a Veterans' Administration facility for further treatment.

On September 8, 1944, appellant was admitted to a Veterans' Administration hospital at Danville, Illinois, from Drew Field, with diagnosis of dementia praecox, simple type, and a history of hallucinations and defective judgment and insight. There, on September 11, 1944, he was given a diagnosis of "psychosis, manic depressive, manic phase." On February 14, 1948, the Danville Veterans' Hospital placed defendant on a ten-day leave of absence with his sister. He failed to return at the end of ten days and was placed on a ninety-day trial visit. On May 24, 1948, not having returned, he was formally discharged from the hospital. His diagnosis on discharge was schizophrenic reaction, paranoid type. The alleged offense occurred prior to the discharge from the hospital. Also a report of an examination by Dr. M. L. Moorer, neuropsychiatrist, April 22, 1949, with a diagnosis "Schizophrenic reaction, paranoid type. Insane, incompetent, and should be placed in insane hospital." And a rating sheet by the Veterans' Administration, showing defendant's rating to be, "Schizophrenic reaction, paranoid type, incompetent from 5-24-48."

The record discloses that after appellant's arrest he showed signs of insanity in the jail and was admitted to

Searcy Hospital for observation and report under the provisions of Articles 1 and 2 of Title 15, Code 1940, on July 29, 1948, and remained there until November 12, 1952, when he was released into the custody of Colbert County authorities as sane and competent to stand trial.

On the trial defendant testified the signatures on the bottom of each page of the purported statement to Deputy Sheriff Stanford appeared to be his signature, but the statement was not true and he had no recollection of having made or signed it. He did not remember being questioned by the sheriff or his deputy and did not remember that anything in the statement took place. He testified he did not commit the offense charged. He also testified he did not remember being in Colbert County in 1948; did not remember being in jail there in 1948, and that he did not remember getting married.

Defendant introduced depositions of Drs. Tarwater and Rowe, which were also introduced on voir dire, and are commented upon further on in this opinion.

Appellant's counsel argue: "The errors which we primarily urge for reversal hinge upon the trial court's actions in dealing with the alleged written confessions and certain allegedly confessory statements of the appellant."

After proper predicate was laid the State offered the confession in evidence.

The defendant objected to the introduction of the confession because the corpus delicti had not been proven and because the defendant could be shown not to have had the mental capacity to be a witness on May 8, 1948.

The defendant, on voir dire, introduced depositions of Dr. Harry S. Rowe, Assistant Superintendent of Searcy Hospital, and Dr. J. S. Tarwater, Superintendent of Alabama State Hospitals. The report of the lunacy commission appointed July 26, 1948, to investigate the sanity of

defendant was attached as Exhibit "B" to each of said depositions. This report was signed by Drs. Tarwater, Rowe and A. M. Richards, and recites in part:

"It is the opinion of each of us, and our opinion jointly and collectively, that the said Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948, was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged."

Dr. Rowe stated in answer to interrogatories that defendant was suffering from schizophrenia of the paranoid type; in his opinion he was insane at the time of the commission of the crime.

Dr. Tarwater stated that the commission, from a study of the reports and the findings in the case, immediately after hospitalization, was of the opinion that defendant was mentally ill and incompetent during April, 1948, and during the period from January 1, 1948, to July 29, 1948.

The State introduced the cross-interrogatories of Drs. Rowe and Tarwater and the depositions of Dr. A. M. Richards, a staff physician at Searcy Hospital, and a member of the lunacy commission.

Dr. Rowe stated that at times while in the hospital defendant's thinking and behavior was normal, and that both his thinking and behavior were more normal than abnormal, and that he had lucid intervals.

Dr. Tarwater stated defendant exhibited abnormal thinking and abnormal behavior for several months after his admission to the hospital. In his opinion defendant was

mentally incompetent on April 19, 1948, and was mentally ill and mentally incompetent on May 8, 1948.

Dr. Richards stated in answer to direct interrogatories that he, Dr. Tarwater and Dr. Rowe found, as stated in the report, that defendant was insane at the time of the commission of the crime for which he was charged. In answer to cross-interrogatories he stated that defendant had been normal mentally since he first saw him; that at times his behavior was normal; his thinking and his behavior was more normal than abnormal; at times he was rational in his thinking and behavior; he did not think defendant had lucid intervals; his mental condition on April 19, 1948, was normal, and his mental condition on May 8, 1948, was good; that defendant did not have psychotic episodes at any time that he saw him.

Deputy Sheriff Stanford then testified for the State that he questioned defendant in the Colbert County jail on May 8, 1954, for five or six hours and returned after supper and continued the questioning. The greater part of the time he was alone with the defendant, but the Sheriff and Deputy Bo Riner were present some of the time. Defendant answered questions like any normal person he has examined. He told his name, address, his past occupations and the date he left Chicago. The witness reduced the statement to writing and read it to defendant in the presence of the Sheriff, Mr. Riner, and Mrs. Craig, the notary public, and the defendant signed it. There was nothing about the defendant's appearance to indicate that he was a sick man. No threats or offers of reward were made to induce defendant to sign the statement.

The State again offered the confession as State's Exhibit "A" only for the purpose of the voir dire hearing. Defendant objected to its introduction because it was taken over a period of hours; it could not reflect the continuity of thought on the part of the witness; could not

determine in any way his mental capacity to make the statement; it is otherwise shown to be involuntary; the corpus delicti has not been proven; the statement is incompetent and illegal, and by express statement of Mr. Stanford the statement was put down in his words and not those of defendant. The court overruled the objection, stating that the confession was being received at that time only for the court's inspection on the question of whether it should be admitted later for the jury's consideration. Defendant duly excepted.

The jury returned to the court room and the State again laid a predicate for the introduction of the confession. On cross-examination deputy Sanford testified that on May 8, 1948, he talked with the defendant from 1:00 to 6:00 and from 7:00 until 10:00 or eleven that night. Most of the time they were in a room 4x6 or 6x8; part of the time the sheriff and another deputy were present; they might have worn their guns and badges; after staying in jail for some time defendant began to shown signs of insanity. The witness also testified the defendant talked rationally and gave sensible answers at the time the confession was made. His eyes were clear and he did not appear to be nervous. The State then offered the confession in evidence as Exhibit "D" to the witness' testimony. The court overruled defendant's objection and defendant excepted.

Appellant contends the facts testified to by the witness Stanford show that the confession was involuntary, and its admission before the jury was reversible error.

There was no testimony tending to contradict the evidence on the part of the State that the confession was not induced by duress or promise. The fact that a confession was made while the maker was under arrest does not render it inadmissible. **Johnson v. State**, 242 Ala. 278, 5

So. 2d 632. Nor is the confession rendered inadmissible by virtue of the fact that the officers to whom the confession was made were armed. **McElroy v. State**, 75 Ala. 9; **Hornsby v. State**, 94 Ala. 55, 10 So. 522; **Flanigan v. State**, 247 Ala. 642, 25 So. 2d 685; **Phillips v. State**, 248 Ala. 510, 28 So. 2d 542. "Likewise, for a confession to be voluntary it is not necessary that it proceed wholly at the suggestion of the prisoner: Levison v. State, 54 Ala. 520." Nor is it rendered involuntary because not verbatim as related by the prisoner. If its transcription is substantially as related and affirmed by the prisoner as correct, it is none the less admissible. 20 Am. Jur. 427, Sec. 492." **Dennison v. State**, 259 Ala. 424, 66 So. 2d 552.

In answer to counsel's contention that the confession was involuntary because of defendant's mental incompetence, we quote further from **Dennison v. State**, supra:

"In this connection it is to be observed that the voluntariness of a confession is not affected by the fact that the accused was not in full possession of her faculties, although that is a circumstance to be considered by the jury in weighing its verity. Vinzant v. State, 28 Ala. App. 220, 180 So. 736; Smith v. State, 25 Ala. App. 297, 145 So. 504; Finch v. State, 81 Ala. 41, 1 So. 565; 22 C. J. S., Criminal Law, Sec. 828, page 1451."

"We treated of this latter principal in the recent case of **Redwine v. State**, 258 Ala. 196, 61 So. 2d 724, and there cited numerous authorities. The rule was deduced that the mere fact that accused was not in full possession of his mental faculties when the confession was made would not render it inadmissible, but only affected its weight to be accorded by the jury; or was provable merely to support other evidence that the statement was not voluntary. To render such confession inadmissible on that ground alone the mania must have been such that accused was either an 'idiot' or a 'lunatic during lunacy.'"

"Of course, the duty of determining whether a confession is voluntary rests within the discretion of the trial court, and its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears. We conclude the wide discretion vested in the court is not shown here to have been abused and there was no error in admitting the confession in evidence."

Counsel argue: "There is in this record (other than in the alleged confession) a total lack of evidence, either direct or circumstantial, that there was a taking and carrying away of property from the person or from within the presence of the prosecuting witness," therefore, there was not sufficient proof of the corpus delicti to justify the admission in evidence of the confession.

"Circumstantial evidence may afford satisfactory proof of the corpus delicti and if facts are presented from which the jury may reasonably infer the crime has been committed, the question must be submitted to the jury, and other evidence tending to implicate the accused is thereby rendered admissible. * * *" **Phillips v. State**, 248 Ala. 510, 28 So. 2d 542.

In 46 Am. Jur., Robbery, p. 162, Sec. 51, it is stated: "Under the rule that all the elements of the corpus delicti may be proved by presumptive or circumstantial evidence, which prevails in most jurisdictions, it has been held that the commission of a robbery is sufficiently established by proof that the victim had valuables on his person at the time of being assaulted, beaten, and rendered unconscious, and that they were missing when he regained consciousness." See also 77 C. J. S., Robbery "corpus delicti", p. 495, Sec. 47.

The testimony of the prosecuting witness, given before the confession was admitted in evidence, afforded reasonable inference of the commission of the crime and was

sufficient proof of the corpus delicti to permit the introduction of the confession.

We find no merit in the argument advanced by appellant's counsel that reversible error was committed by the court in admitting the confession as State's Exhibit A on voir dire. We quote from counsel's argument: "It is an inescapable conclusion that hearing the reading of the confession on voir dire influenced the court to admit it on the case in chief. The court should have denied a hearing or examination of the alleged confession at this point and ruled on its admissibility subsequently in the light of pertinent and competent evidence. In admitting the confession on voir dire, the court prejudiced the rights of appellant and committed error warranting reversal."

Of course, the sole question before the court on voir dire was whether the confession was admissible because voluntary or inadmissible because involuntary, and if the accused had other "pertinent and competent evidence" on the question of its inadmissibility it was incumbent upon him to present it before the court determined that question. After the court admits the confession the evidence given before the jury regarding the manner in which the confession was obtained is for the purpose of enabling the jury to determine its weight and value as evidence.

In **Vernon v. State**, 239 Ala. 593, 196 So. 96, it is said: "Extra judicial confessions of guilt by an accused on trial for crime are prima facie involuntary, and the burden rests on the State to overcome this prima facie infirmity by evidence satisfactory to the court trying the case that the confession was voluntarily made, before such confession can be received in evidence. It is the right of the accused to controvert evidence offered in laying such predicate by cross-examination, or by evidence aliunde, but such countervailing evidence impeaching the predicate to be successful must be offered on the voir dire, before the con-

fession is admitted. Lockett v. State, 218 Ala. 40, 117 So. 457; Cook v. State, 16 Ala. App. 390, 78 So. 306; Pope v. State, 183 Ala. 61, 63 So. 71; Jackson v. State, 83 Ala. 76, 3 So. 847."

"If such countervailing evidence is not offered until after the preliminary question of the admissibility of the confession is passed on by the court it goes to the jury on the credibility of the confession only. **Lockett v. State,** supra; Cook v. State, supra."

As heretofore stated, the witness Stanford testified he found two hats and a tire tool inside the rolling store. Defendant's confession referred to and identified a wrench and a tire tool used in beating the victim and a hat belonging to defendant but which was worn by Robert Howell at the time of the robbery. The continued custody of these articles was accounted for by the State, and the articles together with the testimony of witness Stanford as to the defendant's identification of them at the time of making the confession were properly admitted in evidence in corroboration of the confession, **Phillips v. State,** 248 Ala. 516, 28 So. 2d 542; **Vernon v. State,** supra, and was not error as against the contention that "the statements elicited from Stanford with reference to these exhibits called for separate confessions for which a predicate should have been, but was not laid."

There was sufficient evidence of defendant's guilt to make it a question for the jury; hence there was no error in refusing the requested general charge. The trial court and the jury saw the witnesses and heard the evidence and we cannot say the verdict was so contrary to the great weight of the evidence as to put the trial court in error for refusing to grant the motion for a new trial.

The judgment of the lower court is affirmed.

Affirmed.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

NO. 426

JESSE BLACKBURN,
*Petitioner,*

VS.

STATE OF ALABAMA,
*Respondent.*

## BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN PATTERSON
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BERNARD F. SYKES
*Assistant Attorney General of Alabama*

PAUL T. GISH, JR.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

NO. 426

JESSE BLACKBURN,
*Petitioner,*

VS.

STATE OF ALABAMA,
*Respondent.*

## BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

## BRIEF AND ARGUMENT FOR RESPONDENT

### I

### OPINIONS OF THE COURT BELOW

The opinion of the Court of Appeals of Alabama is reported as follows:

*Jesse Blackburn v. State of Alabama*, 8th Division 407, 88 So. 2d 199.

The case was decided on November 16, 1954. An application for rehearing in the Court of Appeals of Alabama was denied without opinion on March 15, 1955. The petitioner filed a petition for writ of certiorari to the Court of Appeals of Alabama in the Supreme Court of Alabama and the writ was denied on April 12, 1956. *Jesse Blackburn v. State of Alabama*, 8th Division 805, 88 So. 2d 205. An application for rehearing in the Supreme Court of Alabama was denied without opinion on June 21, 1956.

## II.

## JURISDICTION

The petitioner has applied for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Court of Appeals of Alabama rendered November 16, 1954, rehearing denied March 15, 1955, under the provisions of Title 28, Section 1257, United States Code, Judiciary and Judicial Procedure. (See petitioner's brief pages 2 and 3.)

## III.

## STATUTE AND CONSTITUTIONAL PROVISION

The statute prescribing the punishment for one convicted of robbery in Alabama is Title 14, Section 415, Code of Alabama 1940. Said statute reads as follows:

"§415. Punishment of robbery.—Any person who

is convicted of robbery shall be punished, at the discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years."

Section 1 of the Fourteenth Amendment to the Constitution of the United States is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## IV

## ISSUES

The petition in this case raises the following issue:

Whether the petitioner, who stands convicted in a State court of robbery, was denied "due process" of law within the meaning of the Fourteenth Amendment to the Constitution of the United States by virtue of the admission into evidence, over his objections, of his confession which he alleges to have been made involuntarily. The State of Alabama denies the soundness of this contention and insists that the confession was voluntary and was, therefore, admissible into evidence.

V

## STATEMENT OF THE CASE

The petitioner was tried and convicted in the Circuit Court of Colbert County, Alabama, under an indictment charging the offense of robbery. The petitioner entered a plea of "not guilty by reason of insanity" and a general plea of "not guilty" and was found guilty as charged in the indictment by the jury. Punishment was fixed at imprisonment in the penitentiary of Alabama for a period of twenty years. The trial proceedings were reviewed by the Court of Appeals of Alabama which affirmed the judgment of conviction and the sentence imposed. See *Jesse Blackburn v. State* (Alabama Appellate, 8th Division 407, November 16, 1954). The Supreme Court of Alabama on April 12, 1956, denied his petition for writ of certiorari to the Court of Appeals of Alabama. On September 15, 1956, petitioner filed with the Supreme Court of the United States his petition for writ of certiorari directed to the Court of Appeals of Alabama. See *Jesse Blackburn v. State of Alabama*, Docket No. 426, October Term 1956, Supreme Court of the United States.

VI

## STATEMENT OF THE FACTS

The facts of this case, as found by the Court of Appeals of Alabama, are as follows:

"The State's evidence was to the effect that Thomas Clyde Wright operated a rolling store for one W. N. Greenhill. On April 19, 1948, Mr. Wright drove the

store over his regular route. He started up Crowell Hill, on the Allsboro Road, in Colbert County, after dark. At that time he had in his possession a bill fold containing approximately $76.00 belonging to Mr. Greenhill and a bill fold containing $51.00 of his own money. As he put his truck in 'double low' he saw someone coming off the bank toward the road with something in his hand that looked like a gun. He remembered nothing further until he regained consciousness in a hospital two weeks later. At that time he had neither the bill folds nor the money.

"Mr. and Mrs. Hubbard and J. C. James were on Crowell Hill and saw the rolling store stopped on the road. A maroon colored Buick, bearing an Illinois license plate, was parked by it. These witnesses heard a 'rumbling noise' like the sounds of a struggle from inside the store. Mr. James testified two colored men got into the Buick and drove away. Mr. James and Mr. Hubbard armed themselves and returned to the scene about thirty minutes later. They found Mr. Wright at the rear of the store, trying to scotch it so it would not roll down the hill. He was badly beaten, dazed and 'out on his feet.' They found a blood-stained tire tool and two hats inside the store.

"Deputy Sheriff Stanford arrived at Crowell Hill between 10:30 and 11:30 that night and found two hats and a tire tool and blood inside the store. The articles found by him were introduced in evidence.

"Dr. Gary testified he examined Mr. Wright at the hospital on the night of the alleged robbery. He was unconscious and bleeding from the ears and nose. X-rays

made later showed multiple linear fractures on the skull, caused by a blunt instrument used with great force.

"At the time of the alleged crime appellant was a resident of Chicago, Illinois. About a week prior thereto he came to Alabama in company with Dennis Thorne and Robert Howell for the purpose of burying his deceased brother. The trip was made in a maroon Buick with an Illinois tag. The prosecuting witness testified he had seen these men and the automobile at the home of Dennis Thorne's brother on the Allsboro Road. One of the men bought a package of cigarettes from him and paid for it with a twenty dollar bill. On April 16, 1948, appellant married Fanny Rogers in Iuka, Mississippi. There was a wedding party that night at Jack Thorne's house. The couple spent that night at Leon Fuqua's and the next afternoon appellant left with Howell and Dennis Thorne. The next time his bride saw him was in May, 1948, when he was in the Colbert County jail.

"According to the State's evidence, on May 8, 1948, after appellant was arrested and brought to Colbert County from Gary, Indiana, he confessed the crime to deputy sheriff Stanford. The confession was reduced to writing and signed by appellant two days later. The confession was admitted in evidence as State's exhibit 'A' on voir dire examination for the purpose of determining defendant's mental capacity at the time of making the confession. It was also admitted in evidence before the jury as State's exhibit 'D.' In the confession the defendant detailed the movements of the trio from the time they left Chicago until the night of the robbery; told of his marriage to Fanny Rogers; said there was a conspiracy between the three men to rob the driver of

the rolling store, which defendant said he subsequently tried to prevent. He stated that at the time of the robbery, 'I carried small wrench which I now identify as the one I used. Shirt I was wearing that night I identify as same which had blood on it and was washed out by Burneice Moore the night we spent in Nashville. The hat officers found in Rolling Store I identify it as the one Robert Hal was wearing at the time of the robbery, but this hat belonged to me. I now have been presented with a heavy tire tool which officers said was found in Rolling Store. I identify it as the one Robert Hal used to hit the driver of the rooling store, three times on the head." In the confession defendant stated he flagged the store down on the steep part of the hill. Robert Howell rushed up behind defendant as he stepped on the running board. After Robert Howell struck the driver defendant got the change from his right front pocket while Robert Howell was going through his other pockets. After leaving the scene defendant helped to count the money and received $28.00 as his share and he disposed of some checks that were in the bill folds.

"For the defendant, Thomas J. Grace, a field examiner for the office of the Regional Attorney of the Veterans' Administration, identified certain records showing that at the time of the commission of the alleged crime defendant was a 25 year old negro man with a history of mental disorders. On July 1, 1944, at Drew Field, Florida, he was diagnosed as unfit for military service because of psychosis. The Report of the Board of Medical Officers was that he had 'recurrent periods of marked confusion and over-activity, assaultiveness with catatonic posturing, teeth grinding followed by

severe headache and complete amnesia concerning his behavior, constitutes a threat to others when subject to such attacks,' and recommended his transfer to a Veterans administration facility for further treatment.

"On September 8, 1944, appellant was admitted to a Veterans Administration hospital at Danville, Illinois, from Drew Field, with diagnosis of dementia praecox, simple type, and a history of hallucinations and defective judgment and insight. There, on September 11, 1944, he was given a diagnosis of 'psychosis, manic depressive, manic phase.' On February 14, 1948, the Danville Veterans hospital placed defendant on a ten-day leave of absence with his sister. He failed to return at the end of ten days and was placed on a 90 day trial visit. On May 24, 1948, not having returned, he was formally discharged from the hospital. His diagnosis on discharge was 'Schizophrenic reaction, paranoid type. The alleged offense occurred prior to the discharge from the hospital. Also a report of an examination by Dr. M. L. Moorer, neuropsychiatrist, April 22, 1949, with a diagnosis 'Schizophrenic reaction, paranoid type. Insane, incompetent and should be placed in insane hospital.' And a rating sheet by the Veterans' Administration, showing defendant's rating to be, 'Schizophrenic reaction, paranoid type, incompetent from 5-24-48.'

"The record discloses that after appellant's arrest he showed signs of insanity in the jail and was admitted to Searcy Hospital for observation and report under the provisions of Articles 1 and 2 of Title 15, Code 1940, on July 29, 1948, and remained there until November 12, 1952, when he was released into the custody of Colbert County authorities as sane and competent to stand trial.

"On the trial defendant testified the signatures on the bottom of each page of the purported statement to deputy sheriff Stanford appeared to be his signatures but the statement was not true and he had no recollection of having made or signed it. He did not remember being questioned by the sheriff or his deputy and did not remember that anything in the statement took place. He testified he did not commit the offense charged. He also testified he did not remember being in Colbert County in 1948; did not remember being in jail there in 1948 and that he did not remember getting married.

"After proper predicate was laid the State offered the confession in evidence.

"The defendant objected to the introduction of the confession because the corpus delecti has not been proven and because the defendant could be shown not to have had the mental capacity to be a witness on May 8, 1948.

"The defendant, on voir dire, introduced depositions of Dr. Harry S. Rowe, assistant Superintendent of Searcy Hospital, and Dr. J. S. Tarwater, Superintendent of Alabama State Hospitals. The report of the lunacy commission appointed July 26, 1948, to investigate the sanity of defendant was attached as exhibit 'B' to each of said depositions. This report was signed by Drs. Tarwater, Rowe, and A. M. Richards, and recites in part:

"'It is the opinion of each of us, and our opinion jointly and collectively, that the said Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948, was insane and incompetent. During his

stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the commission of the crime for which he is charged.'

"Dr. Rowe stated in answer to interrogatories that defendant was suffering from schizophrenia of the paranoid type; in his opinion he was insane at the time of the commission of the crime.

"Dr. Tarwater stated that the commission, from a study of the reports and the findings in the case, immediately after hospitalization, was of the opinion that defendant was mentally ill and incompetent during April 1948, and during the period from January 1, 1948 to July 29, 1948.

"The State introduced the cross interrogatories of Drs. Rowe and Tarwater and the depositions of Dr. A. M. Richards, a staff physician at Searcy Hospital, and a member of the lunacy commission.

"Dr. Rowe stated that at times while in the hospital defendant's thinking and behavior was normal, and that both his thinking and behavior were more normal than abnormal, and that he had lucid intervals.

"Dr. Tarwater stated defendant exhibited abnormal thinking and abnormal behavior for several months after his admission to the hospital. In his opinion defendant was mentally incompetent on April 19, 1948, and was

mentally ill and mentally incompetent on May 8, 1948.

"Dr. Richards stated in answer to direct interrogatories that he, Dr. Tarwater and Dr. Rowe found, as stated in the report, that defendant was insane at the time of the commission of the crime for which he was charged. In answer to cross interrogatories he stated that defendant had been normal mentally since he first saw him; that at times his behavior was normal; his thinking and his behavior was more normal than abnormal; at times he was rational in his thinking and behavior; he did not think defendant had lucid intervals; his mental condition on April 19, 1948, was normal, and his mental condition on May 8, 1948, was good; that defendant did not have psychotic episodes at any time that he saw him.

"Deputy Sheriff Stanford then testified for the State that he questioned defendant in the Colbert County jail on May 8, 1954, for five or six hours and returned after supper and continued the questioning. The greater part of the time he was alone with the defendant, but the Sheriff and deputy Bo Riner were present some of the time. Defendant answered questions like any normal person he has examined. He told his name, address, his past occupations and the date he left Chicago. The witness reduced the statement to writing and read it to defendant in the presence of the sheriff, Mr. Riner, and Mrs. Craig, the notary public, and the defendant signed it. There was nothing about defendant's appearance to indicate that he was a sick man. No threats or offers of reward were made to induce defendant to sign the statement.

"The State again offered the confession as State's

Exhibit 'A' only for the purpose of the voir dire hearing. Defendant objected to its introduction because it was taken over a period of hours; it could not reflect the continuity of thought on the part of the witness; could not determine in any way his mental capacity to make the statement; it is otherwise shown to be involuntary; the corpus delicti has not been proven; the statement is incompetent and illegal, and by express statement of Mr. Stanford the statement was put down in his words and not those of defendant. The court overruled the objection, stating that the confession was being received at that time only for the court's inspection on the question of whether it should be admitted later for the jury's consideration. Defendant duly excepted.

"The jury returned to the court room and the State again laid a predicate for the introduction of the confession. On cross examination deputy Sanford testified that on May 8, 1948, he talked with the defendant from 1:00 to 6:00 and from 7:00 until 10:00 or eleven that night. Most of the time they were in a room 4 x 6 or 6 x 8; part of the time the sheriff and another deputy were present; they might have worn their guns and badges; after staying in jail for some time defendant began to show signs of insanity. The witness also testified the defendant talked rationally and gave sensible answers at the time the confession was made. His eyes were clear and he did not appear to be nervous. The State then offered the confession in evidence as exhibit 'D' to the witness' testimony. The court overruled defendant's objection and defendant excepted."

The Court of Appeals of Alabama further found that there was no testimony tending to contradict the

evidence of the State that the confession was not induced by duress or promise.

## VII

## BRIEF AND ARGUMENT

1. The rule in Alabama, as to the admissibility of confessions in evidence, is that, prima facie, a confession is not voluntary, and there must be evidence addressed to the trial judge rebutting that presumption and showing prima facie that the confession was voluntarily made, unless, of course, the circumstances attending the confession affirmatively disclose its character. When a proper predicate has been laid, voluntary confessions become admissible and their weight is for the jury.

*Smitherman v. State*, (Ala. 1956), 85 So. 2d 427;

*Hines v. State*, 260 Ala. 668, 72 So. 2d 296;

*Myhand v. State*, 259 Ala. 415, 66 So. 2d 544;

*Taylor v. State*, 249 Ala. 130, 30 So. 2d 256;

*Phillips v. State*, 248 Ala. 510, 28 So. 2d 542;

*Johnson v. State*, 242 Ala. 278, 5 So. 2d 632;

*Dyer v. State*, 241 Ala. 679, 4 So. 2d 311;

*Vernon v. State*, 239 Ala. 593, 196 So. 96;

*Canty v. State*, 238 Ala. 384, 191 So. 260;

*Stewart v. State*, 231 Ala. 594, 165 So. 840;

*Jackson v. State*, 226 Ala. 72, 145 So. 656.

2. Alabama authorities are clear that a confession otherwise shown to have been voluntary is not rendered

inadmissible by the mere fact that the accused confessed to officials while under arrest and in their legal custody. Incarceration in the ordinary manner and questioning by the authorities does not per se render the confession involuntary.

*Dennison v. State*, 259 Ala. 424, 66 So. 2d 552;

*Myhand v. State*, 259 Ala. 415, 66 So. 2d 544;

*Thomas v. State*, 257 Ala. 124, 57 So. 2d 625;

*Wilson v. State*, 256 Ala. 12, 53 So. 2d 559;

*Odom v. State*, 253 Ala. 571, 46 So. 2d 1;

*Smith v. State*, 253 Ala. 220, 43 So. 2d 821;

*Logan v. State*, 251 Ala. 441, 37 So. 2d 753;

*Taylor v. State*, 249 Ala. 130, 30 So. 2d 256;

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*Phillips v. State*, 248 Ala. 510, 28 So. 2d 542;

*Brooks v. State*, 248 Ala. 628, 29 So. 2d 4;

*Smith v. State*, 248 Ala. 363, 27 So. 2d 495;

*Johnson v. State*, 242 Ala. 278, 5 So. 2d 632;

*Dyer v. State*, 241 Ala. 679, 4 So. 2d 311;

*Burns v. State*, 226 Ala. 117, 145 So. 436;

*Redd v. State*, 69 Ala. 255.

3. The Supreme Court of the United States likewise has consistently held to the rule that spontaneity is not necessary to the voluntariness of a confession, and that the proper questioning of a suspect in custody of law enforcement officers is not prohibited either by the

common law or by the Fourteenth Amendment. No denial of "due process" can be assumed from the bare fact that the accused is interrogated by investigating officers and confesses in response to their questioning.

*Brown v. Allen*, 344 U. S. 443, 73 S. Ct. 397, 97 L. Ed. 469;

*United States v. Carignan*, 342 U. S. 36, 72 S. Ct. 97, 96 L. Ed. 48;

*Gallegos v. Nebraska*, 342 U. S. 55; 72 S. Ct. 141, 96 L. Ed. 86;

*Taylor v. Alabama*, 335 U. S. 252, 68 S. Ct. 1415, 92 L. Ed. 1935;

*Lyons v. Oklahoma*, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed. 1481;

*United States v. Mitchell*, 322 U. S. 65, 64 S. Ct. 896, 88 L. Ed. 1140;

*Johnson v. Alabama*, 316 U. S. 693, 62 S. Ct. 1299, 86 L. Ed. 1763;

*McNabb et al. v. United States*, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819;

*Lisenba v. California*, 314 U. S. 219, 62 S. Ct. 280, 86 L. Ed. 166;

*Ziang Sung Wan v. United States*, 266 U. S. 1, 45 S. Ct. 1, 69 L. Ed. 131;

*Powers v. United States*, 223 U. S. 303, 32 S. Ct. 281, 56 L. Ed. 448;

*Hardy v. United States*, 186 U. S. 224, 22 S. Ct. 889, 46 L. Ed. 1137;

*Bram v. United States*, 168 U. S. 532, 18 S. Ct. 183, 42 L. Ed. 568;

*Wilson v. United States*, 162 U. S. 613, 16 S. Ct. 895, 40 L. Ed. 1090;

*Pierce v. United States*, 160 U. S. 355, 16 S. Ct. 321, 40 L. Ed. 454;

*Hopt v. Utah*, 110 U. S. 574, 4 S. Ct. 202, 28 L. Ed. 262;

*Brinegar v. United States* (C. C. A. Okla.), 165 Fed. 2d 512, Affd. 338 U. S. 160, 69 S. Ct. 1302, 93 L. Ed. 1375;

*United States v. Gottfried et al.* (C. C. A. N. Y.), 165 Fed. 2d 360, cert. den. 333 U. S. 860, 68 S. Ct. 738, 92 L. Ed. 1139.

4. Convictions of crime in state courts, obtained wholly or in part by introducing in evidence a confession of the accused, have been set aside by the Supreme Court of the United States only when all the surrounding facts and circumstances left no doubt that the "confession" was not voluntary. The test applied has been, whether the confession was the product of other than reasoned and voluntary choice. An accused is deprived of "due process" only when, by extraneous pressures and influence, he is deprived of mental freedom to withhold inculpatory statements. Admittedly, actual brutality, torture, beating, starvation, physical pain, or threatened violence are not necessary to void a confession. Any method calculated to break the will of the accused, and leave him without free choice to admit or deny or stand mute to the charge, is sufficient.

Interrogation of a suspect has voided a confession thereby obtained only in situations inherently coercive in which the "suction process" was used. Interrogation per se has not been outlawed. Where coercion is lacking, no constitutional right of the accused is violated if, in answer to police questioning, he freely confesses.

*Stein v. New York*, 346 U. S. 156, 73 S. Ct. 1077, 97 L. Ed. 1522;

*Watts v. Indiana*, 338 U. S. 49, 69 S. Ct. 1347, 93 L. Ed. 1434;

*Harris v. South Carolina*, 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1440;

*Turner v. Pennsylvania*, 338 U. S. 62, 69 S. Ct. 1352, 93 L. Ed. 1443;

*Lee v. Mississippi*, 332 U. S. 742, 68 S. Ct. 300, 92 L. Ed. 330;

*Haley v. Ohio*, 332 U. S. 596, 68 S. Ct. 302, 92 L. Ed. 224;

*Malinski et al. v. New York*, 324 U. S. 401, 65 S. Ct. 781, 89 L. Ed. 1029;

*Lyons v. Oklahoma*, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed. 1481;

*Ashcraft et al. v. Tennessee*, 322 U. S. 143, 64 S. Ct. 921, 88 L. Ed. 1192;

*Anderson et al. v. United States*; 318 U. S. 350, 63 S. Ct. 599, 87 L. Ed. 829;

*McNabb et al. v. United States*, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819;

*Ward v. Texas*, 316 U. S. 547, 62 S. Ct. 1139, 86 L. Ed. 1663;

*Lisenba v. California*, 314 U. S. 219, 62 S. Ct. 280, 86 L. Ed. 166;

*Vernon v. Alabama*, 313 U. S. 547, 61 S. Ct. 1092, 85 L. Ed. 1513;

*Lomax v. Texas*, 313 U. S. 544, 61 S. Ct. 956, 85 L. Ed. 1511;

*White v. Texas*, 309 U. S. 631, 60 S Ct. 706, 84 L. Ed. 989;

*Canty v. Alabama*, 309 U. S. 629, 60 S. Ct. 612, 84 L. Ed. 988;

*Chambers et al. v. Florida*, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716;

*Brown et al. v. Mississippi*, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682;

*Ziang Sung Wan v. United States*, 266 U. S. 1, 45 S. Ct. 1, 69 L. Ed. 131.

5. The voluntary character of a confession is not affected by the fact that the accused was not in full possession of his faculties when the confession was made, and a confession is not admissible on the ground of the accused's alleged insanity when his sanity is a primary issue in the case.

*Dennison v. State*, 259 Ala. 424, 66 So. 2d 552;

*Redwine v. State*, 258 Ala. 196, 61 So. 2d 724;

*People v. Cokahnour*, 120 Cal, 253, 52 Pac. 505;

*State v. Pamelia*, 122 La. 207, 47 So. 508;

*State v. Jones*, 127 La. 694, 53 So. 959;

*State v. Jones et al.*, 47 La. Ann. 1525, 18 So. 515;

*Young et al. v. State*, 90 Md. 579, 45 Atl. 531;

*Carlisle v. Texas*, 37 Tex. Crim. Rep. 108, 38 S. W. 991;

*Herndon v. State*, 50 Tex. Crim. Rep. 552, 99 S. W. 538;

*State v. Leuth*, 5 Ohio C. C. 94;

*Bettis v. State*, 160 Ala. 3, 49 So. 781;

*Eskridge v. State*, 25 Ala. 30;

*State v. Sirmay*, 40 Utah 525, 122 Pac. 748;

*State v. Crank*, 2 Bail. (S. C.) 66, 23 Am. Dec. 117;

*Cahill v. People*, 141 Colo. 29, 137 Pac. 2d 673, 148 A. L. R. 536;

*Vinzant v. State*, 28 Ala. App. 220, 180 So. 736;

*Taylor v. State*, 27 Okla. Cr. 165, 225 Pac. 988;

*People v. Cleveland*, 251 Mich. 542, 232 N. W. 384;

*People v. Lehew*, 209 Cal. 336, 287 Pac. 337;

*Eiffe v. State* (Ind.), 77 N. E. 2d 750.

See:

20 Amer. Juris., Evidence, Section 523, p. 448;

22 C. J. S., Criminal Law, Section 828, p. 1451;

50 L. R. A. (N. S.) 1082, note;

18 L. R. A. (N. S.) 790, note.

## VIII

## ARGUMENT

1. As pointed out under the list of authorities cited, supra, the rule in Alabama is that confessions are prima facie involuntary and, prior to their admission in evidence, the prosecution must lay a predicate for their admission by testimony showing their voluntary character. When a predicate has been laid, confessions become admissible and their weight is for the jury. We submit that the predicate laid preliminary to admission of the petitioner's confession was legally sufficient and clearly demonstrated the voluntary character of his confession. Being voluntary and not having been induced by extraneous forces of circumstance calculated to deprive the petitioner of his will and mental freedom either to admit, deny or stand mute to the accusation of the crime, his confession of guilt flowed from his desire to unburden his soul. Since the law always has recognized the right of an accused freely to confess guilt, the petitioner was not deprived of "due process" and hence has no standing before this Honorable Court.

We look to the facts found from the record by the Court of Appeals of Alabama for the nature of the predicate laid. It was established through the voir dire examination of Deputy Sheriff Stanford. See statement of facts, supra. Mr. Stanford testified that he questioned the petitioner for several hours on May 8, 1954; that the greater part of the time he was alone with the petitioner, but the Sheriff and another Deputy Sheriff were present some of the time; that the petitioner answered questions like any normal person; that

he told his name, address, his past occupations, and the date he left Chicago; that the confession was reduced to writing and read to the petitioner in the presence of the Sheriff, another Deputy Sheriff, and a Notary Public, and the petitioner signed it; that there was nothing about the petitioner's appearance to indicate that he was a sick man; and that no threats or offers of reward were made to induce the petitioner to sign the confession.

It was shown by the evidence that prior to the petitioner's confession no one had offered him any promise, hope of reward, remuneration or inducement of any kind; that he was not told that it would be better for him if he did confess or worse for him if he did not confess; that he was not threatened or coerced, nor was any force or violence used toward him to induce a confession.

Following this proper predicate, the petitioner's confession, we submit, was lawfully received in evidence and without denial of "due process."

2. The courts of Alabama, as well as the courts of other states, and the federal courts, have consistently held to the rule that a confession, otherwise shown to have been voluntary and admissible in evidence, is not rendered inadmissible by the mere fact that it was made while the accused was under arrest and in legal custody of law enforcement officers. No decision to the contrary by the Supreme Court of the United States has come to our attention. The fact that the vast majority of voluntary confessions are made to police officials makes evident the soundness of the rule. Upon such

officials rests the primary burden and responsibility for the detection and prosecution of crime. The time tested process of investigation at the scene of the crime, followed by police interrogation of suspects, is today frequently society's only alternative in its effort to cope with an increasingly difficult crime problem. Here we emphasize that the continued acceptance by our courts, state and federal, of this historical crime detection method foreshadows no encroachment upon those rights guaranteed our citizens by the Fourteenth Amendment to the Constitution of the United States. The limit of those rights is that no citizen shall be compelled to incriminate himself. It is true that the pages of history have been bloodied by abuses of the privilege and practice of police interrogation of persons suspected of crime. It is not necessary to travel to foreign shores to find such abuses. They have from time to time echoed through the halls of justice in almost every court in our land. The instances of abuse in recent years, however, have shown a remarkable and steady decline attributable in our judgment to the widespread training of police personnel, under federal sponsorship, in scientific methods of crime detection, and to the watchful eye of this Honorable Court. To outlaw all extra-judicial confessions, voluntary and involuntary alike, would, in our judgment, entail consequences far more serious to society than the abuses which sometimes occur.

3. No decision by the Supreme Court of the United States runs counter to the rule followed by the states generally, and by Alabama in particular. Our nation's highest court recognizes the admissibility of confessions, otherwise shown to be voluntary, even though made

by an accused while in the custody of law enforcement officers. While admittedly that court has consistently cast aside convictions had in state courts when the circumstances of the interrogation was shown to be coercive, we do not interpret the trend of its decisions to be towards outlawry of all interrogation by the authorities of persons accused of crime. On the contrary, the court has consistently held to the principle that a confession made to investigating officers is not per se involuntary, nor inadmissible in evidence if shown to have sprung from the free will and choice of the accused to unburden himself by confessing the truth. While it is clear from the decisions that illegal pressures may be applied against an accused other than by actual physical or mental forces, threats, or intimidation, and that prolonged examination may of itself be inherently coercive, it is equally clear that confessions given after relatively short periods of interrogation, such as that shown by the evidence in the instant case, are admissible if otherwise shown to have been uncoerced. See *Taylor v. Alabama*, supra; *Lyons v. Oklahoma*, supra; and *Johnson v. Alabama*, supra.

4. We concede that "due process" within the meaning of the Fourteenth Amendment is lacking where a defendant has been convicted in a state court upon the basis, in whole or in part, of a confession not shown to have been voluntary. We concede that continued and unremitting police interrogation of an accused over such period of time as is calculated to break his will and mental freedom to admit, deny or stand mute, is inherently coercive, and that a confession obtained by such a suction process is involuntary. See *Ashcraft, et al. v. Tennessee*, supra. We submit, however, that the

facts at bar do not bring the petitioner's case within that rule. The record raises no question of police brutality. It raises no suspicion that the petitioner was "sweated" to the breaking point. There is no indication that the petitioner's arraignment was delayed or that he unlawfully was held in custody or denied his constitutional right to remain silent. There is no evidence of discourtesy towards or indignities inflicted upon this petitioner. We find in the evidence no indication that the law enforcement officers were not friendly or sympathetic towards him. Since there is no indication that he requested or desired the services of an attorney, the officers having his custody are not charged with having denied his constitutional rights in that respect. We find in the circumstances of his interrogation nothing "inherently coercive" as that term has been used and defined by the decisions of this Honorable Court construing the "due process" clause as it relates to police interrogation of persons suspected of crime. We submit that the facts of the petitioner's case are not analogous to those of any decisions of this court concluding that prolonged questioning of an accused had, of itself alone, rendered his confession involuntary. Cf. *Watts v. Indiana*, supra; *Harris v. South Carolina*, supra; and *Turner v. Pennsylvania*, supra.

5. The gist of the petitioner's contention is that since the constitutional propriety of his interrogation should be measured by his alleged mental instability, such interrogation was, as against this particular person, inherently coercive, and that his confession was, therefore, involuntary as a matter of law. We cannot accede to the soundness of this argument and submit that it is without support of legal authority. The trial judge,

who heard the testimony from the witnesses, found against this contention when he admitted the confession into evidence. The petitioner pleaded specially "not guilty by reason of insanity," and his sanity was a prime factual issue in the case. The jury resolved that issue against him. That finding by the jury was equivalent to a finding that he was competent to testify as a witness and competent to confess his deed. The contents of the confession showed that the petitioner explained the events before, during, and after the crime in great detail to Deputy Sheriff Stanford. This petitioner obviously confessed through the exercise of his free will and was prompted to unburden his soul by full disclosure of the truth. No extraneous pressure was exerted against him. His right voluntarily to confess was a personal and constitutional right. There is much reason to assume that he desired to avail himself of that right as to assume that the circumstances of his interrogation had the legal effect of compulsion.

## IX

## CONCLUSION

We believe that the prosecution laid a proper and sufficient predicate establishing the voluntary character of the petitioner's confession and that it, therefore, was properly admitted in evidence. He was not sacrificed as a victim of the so-called "suction process" nor were the circumstances of his interrogation inherently coercive. We conclude that the petitioner was not denied "due process" within the meaning of the Fourteenth Amendment to the Constitution of the United States.

We, therefore, respectfully submit that the writ should be denied.

*Respectfully submitted.*

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I, Bernard F. Sykes, one of the attorneys for Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 7th day of November, 1956, I served a copy of the foregoing brief and argument in opposition to petition for writ of certiorari on one of the attorneys for the petitioner by mailing a copy in a duly addressed envelope to said attorney of record as follows:

TO: Truman Hobbs
306 Professional Center
Montgomery, Alabama

Bernard F. Sykes

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IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 426.

JESSE BLACKBURN,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

## BRIEF FOR THE PETITIONER.

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## BRIEF FOR THE PETITIONER.

### OPINIONS BELOW.

The opinion of the Circuit Court of Colbert County, Alabama, is unreported. The opinion of the Court of Appeals of Alabama (R. 240) is reported at 88 So. 2d 199. The decision of the Supreme Court of Alabama refusing to grant the petition for certiorari (R. 252) and its decision denying the application for a rehearing (R. 254) is reported at 264 Ala. 694, 88 So. 2d 205.

## JURISDICTION.

The judgment of the Court of Appeals of Alabama was rendered on November 16, 1954 (R. 240). Petitioner applied to the said Court of Appeals for a rehearing, which was denied (R. 250). Petitioner thereupon petitioned the Supreme Court of Alabama for a writ of certiorari to review the judgment of the Court of Appeals of Alabama. The petition for certiorari was denied on April 12, 1956. Petitioner made application for rehearing to the Supreme Court of Alabama. This application was denied on June 21, 1956 (R. 254). This action of the Supreme Court of Alabama made final the judgment of the Court of Appeals of Alabama, and the state remedies for petitioner were exhausted.

Petition for certiorari was filed in the Supreme Court of the United States on September 15, 1956, and was granted December 3, 1956. The jurisdiction of this Court rests on 28 U. S. C., Sec. 1257.

In the trial court petitioner repeatedly objected to the efforts of the State of Alabama to introduce into evidence his alleged confession. Petitioner objected that the confession was not voluntary and that petitioner lacked the mental competence to make a voluntary confession (R. 32, 106, 113, 137). The trial court admitted the confession into evidence and petitioner excepted to the ruling of the trial court (R. 106, 107).

The question of the voluntary nature of the confession was fully presented and ruled upon by the trial court on the motion for new trial. It was argued to the Alabama courts in seeking appellate review. The Court of Appeals of Alabama stated (R. 247):

> "Of course, the duty of determining whether a confession is voluntary rests within the discretion of the

trial court, and its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears. We conclude the wide discretion vested in the court is not shown here to have been abused and there was no error in admitting the confession in evidence."

## CONSTITUTIONAL PROVISIONS INVOLVED.

Section 1 of the 14th Amendment of the United States Constitution is involved:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## QUESTION PRESENTED.

1. Does a conviction based on a confession obtained after nine hours of relay questioning from one over leave from an insane hospital and adjudged mentally incompetent at the time of his release from said hospital and subsequently adjudged insane by the sanity board appointed by the State of Alabama to examine him and adjudged probably insane at the time of his confession by members of the same sanity board, offer that fundamental fairness required by the due process of law clause of the 14th Amendment of the Constitution of the United States?

## STATEMENT OF THE CASE.

Petitioner was charged with the capital offense of robbery. He pleaded not guilty and not guilty by reason of insanity. He was tried, convicted and sentenced to twenty years imprisonment. His conviction was based on an alleged confession, which petitioner has contended at every stage of his trial and appeal was involuntary (R. 32, 106, 113, 137, 251).

Petitioner is a young Negro, 25 years of age at the time of his alleged crime on April 19, 1948. The record indicates that he had no involvement with the law prior to the charges brought against him in this case. He had been in the armed forces during World War II and was discharged in 1944 as unfit for military service because of a "permanent" mental disability (R. 143, 144, 145). Pursuant to the recommendation of the Army Medical Board, petitioner was transferred to an insane hospital with a diagnosis of dementia praecox, simple type, and a history of hallucination and defective judgment and insight (R. 146, 147).

Petitioner remained under treatment in this hospital from September, 1944, until February, 1948. In September, 1944, petitioner was adjudged 50% mentally incompetent (R. 155, 156). In November, 1946, he was adjudged 100% mentally incompetent (R. 156). On February 14, 1948, he was released from the hospital for a ten-day leave in the care of his sister. When he did not return from this leave he was automatically discharged from the hospital on May 24, 1948. His medical record states that on his discharge "the diagnosis of schizophrenic reaction, paranoid type, remains unchanged, and he was considered incompetent at the time of his release" (R. 150).

In April, 1948, while petitioner was several days over leave from the insane hospital, he left his home in Illinois to attend his brother's funeral in Alabama. The crime with

which petitioner was charged occurred while he was on this trip to Alabama.

Petitioner was arrested in Indiana and was brought to Colbert County, Alabama. On May 8, 1948, he allegedly confessed to the crime for which he was convicted. The crime was a brutal one committed in a rural area and involved armed assault on the white operator of a rolling country store. One of the deputy sheriffs, who questioned petitioner and who wrote the alleged confession, testified that petitioner "talked sensible" at the time of his confession (R. 105). This same deputy conceded that thereafter while petitioner was still in jail awaiting trial he observed the behavior of the petitioner which "showed signs of insanity" (R. 103). The Sheriff of Colbert County reported to the Circuit Judge of Colbert County that there existed reasonable grounds for believing petitioner insane (R. 2). The Circuit Judge had petitioner examined as to his sanity by three reputable local physicians and other witnesses, all of whom concurred in the view that there was reasonable ground for believing petitioner insane (R. 2).

Petitioner was thereupon, on July 26, 1948, delivered to the Superintendent of the Alabama State Hospitals, who was directed to convene a commission of lunacy to determine petitioner's mental condition. On January 6, 1949, the lunacy commission made a unanimous adjudication that petitioner was insane at the time he was delivered to the state mental hospital in July, 1948 (R. 5, 41, 42). The Commission was further unanimous in its judgment that petitioner "was insane at the time of the commission of the crime for which he is charged" (R. 5). Two of the three doctors composing the commission on lunacy stated that in their opinion he was "most probably insane" or "mentally ill and mentally incompetent" on May 8, 1948 (R. 50, 67), this being the date of the alleged confession. One of the doctors stated that the three doctors on the sanity commission were of the opinion that petitioner was

mentally incompetent from January 1, 1948, to July 29, 1948 (R. 63). The testimony of the third doctor on the commission was somewhat confused. He testified, however, that he did not think petitioner had lucid intervals (R. 82). He also testified that petitioner was probably insane on April 19, 1948 (R. 77), but on cross-examination he stated that he thought petitioner's mental condition on April 19, 1948, was normal (R. 83).

On the findings of the commission of lunacy the Circuit Court of Colbert County "permanently" committed petitioner to the Alabama State Hospital for treatment of the insane until "restored to his right mind" (R. 62). Under this order of the Circuit Court, petitioner remained under treatment in the insane hospital for more than four years, from July, 1948, to November 12, 1952, at which time he was adjudged mentally competent to stand trial and was returned to Colbert County (R. 68, 69). At the time of petitioner's trial he had spent his entire adult life in an insane hospital except for a few weeks of absence without leave.

Petitioner testified that he had no recollection of events leading up to the alleged crime, the crime itself, his arrest in Indiana, his detention in the Colbert County jail, his confession, his commitment to the Alabama State Hospital, or the early months or years of treatment at said hospital (R. 193, 194, 195). Petitioner denied the truth of the confession, acknowledged that the signature on the confession appeared to be his, but stated that he could not recall anything about it. Petitioner's prior medical history attested that he had for many years suffered recurrently from "complete amnesia concerning his behavior" (R. 144).

Petitioner's alleged confession on May 8, 1948, was obtained after nine or ten hours of questioning by one or more law enforcement officers who were coming "in and out" (R. 102, 103). The questioning was uninterrupted

except for a break of approximately one hour while the examining officers went to supper (R. 102). Most of the questioning took place in a room four feet by six feet or six feet by eight feet, in which were petitioner and as many as three law enforcement officers (R. 102). The law enforcement officers could not recall whether they were wearing or exhibiting their guns at the time of the questioning (R. 104). Petitioner allegedly confessed at approximately eleven o'clock at night (R. 102).

Petitioner objected to the introduction into evidence of the alleged confession on the ground that it was not voluntary, that it was not shown that petitioner had the mental capacity to be a witness, that it affirmatively appeared that petitioner was insane at the time of the making of the alleged confession (R. 32, 33, 106, 107). These objections to the introduction of the confession were repeated many times at the trial (R. 32, 106, 113, 137). Despite petitioner's objections, the trial court admitted the confession into evidence and made the determination that the confession was voluntary. Based on the alleged confession, a conviction was obtained and petitioner was sentenced to serve twenty years in prison.

In the Court of Appeals of Alabama petitioner argued that the trial court committed reversible error in admitting the alleged confession. The Court of Appeals affirmed the conviction, stating that the duty of determining whether a confession is voluntary rests within the discretion of the trial court, "and its decision allowing a confession in evidence will not be disturbed unless an abuse of such discretion clearly appears." **Blackburn v. State**, ... Ala. App. ..., 88 So. 2d 199, 205. The Court of Appeals concluded by stating that the wide discretion vested in the trial court was not shown to have been abused and there was no error in admitting the confession in evidence. The further efforts of petitioner to get this decision reviewed in the state courts were unsuccessful.

## ARGUMENT.

This case raises fundamental and important questions as to the protection extended by the Fourteenth Amendment of the Constitution of the United States to incompetent or insane persons whose convictions rest on alleged confessions obtained while such persons were suffering from insanity or mental incompetency.

All of the facts concerning petitioner's alleged confession were supplied by the deputy sheriff who obtained such confession (R. 99, et seq.). Petitioner had no recollection about the confession or of anything for a period of time extending from prior to the commission of the crime at issue until several months after his confinement for treatment in the Alabama hospital for the insane (R. 193, 194, 195). His inability to recall these events is consistent with petitioner's prior medical history, which reveals that he had suffered recurrently for many years from "complete amnesia concerning his behavior" (R. 144). According, therefore, to the testimony of the deputy sheriff, petitioner's confession was obtained after nine or ten hours of questioning by one or more law enforcement officers who were coming "in and out" (R. 102, 103). The deputy stated that the only interruption in the relay questioning from one o'clock in the afternoon until ten or eleven o'clock at night was approximately one hour while the questioners ate supper (R. 102).

Most of the questioning took place in a room at the jail, which the deputy testified was four feet by six feet or six feet by eight feet (R. 102). For the greater part of the time petitioner was in this room with only one law enforcement officer, but at times all three officers were in the room for the purpose of examining petitioner.

If petitioner had been a person of normal will or mind, such a confession would be of doubtful validity when care-

fully considered against the challenge of the due process requirements of the Fourteenth Amendment. **Harris v. South Carolina**, 338 U. S. 68, 71; **Watts v. Indiana**, 338 U. S. 49; **Turner v. Pennsylvania**, 338 U. S. 62. Nine or ten hours of sustained questioning by relays of law enforcement officers does not suggest that the State has repelled "the imputation of undue influence," **Bonner v. State**, 55 Ala. 242, 245, 246—even where the prisoner was of normal will or mind. But in this case, this petitioner was not such a person.

He was a young Negro, 25 years of age at the time of his alleged crime on April 19, 1948. When he left his home in Illinois to come to his brother's funeral in Alabama, he was over leave from a United States Government insane hospital. He had been in government insane institutions since 1944 when he was discharged from the armed forces because of a permanent mental disability (R. 143, 144, 145). He had been rated by such hospitals as "100%" mentally incompetent from November 22, 1946.

When petitioner did not return from the ten-day leave in the care of his sister, which leave commenced on February 14, 1948, he was automatically discharged from the hospital. His medical records stated that at the time of his discharge "the diagnosis of schizophrenic reaction, paranoid type, remains unchanged, and he was considered incompetent at the time of his release" (R. 150).

It is significant that the doubts as to petitioner's sanity were not raised first as legal defenses by petitioner or his counsel; they were raised by the sheriff and the jailer into whose custody petitioner had been placed (R. 103, 104). Although these people were untrained in the detection of mental disorders it became apparent to them as well as to the deputy that took petitioner's confession that petitioner showed "signs of insanity" (R. 103, 104). They called this fact to the attention of the Circuit Court.

The Circuit Court thereupon had petitioner examined by three local doctors and certain lay persons. Everyone who examined petitioner agreed that there was reasonable ground for believing petitioner insane. The Court accordingly placed petitioner in the custody of the Superintendent of the Alabama State Hospitals and directed the Superintendent to appoint two other doctors to serve with him on a lunacy commission to determine the mental condition of petitioner.

The lunacy commission officially reported to the Circuit Court its unanimous opinion that petitioner was insane and incompetent when placed in the custody of the Superintendent of the Alabama State Hospitals in July, 1948, and further that he was insane on April 19, 1948, being the time of the commission of the crime for which he was charged (R. 5). The doctors on the lunacy commission were also of the opinion that petitioner was mentally ill and incompetent from January 1, 1948 to July 29, 1948 (R. 63). This period includes the date of his alleged confession on May 8, 1948.

On the basis of the report of the lunacy commission, the Circuit Court "permanently" committed petitioner to an Alabama insane hospital for treatment until "restored to his right mind" (R. 62). The severity of petitioner's mental derangement may be judged by the fact that he was not restored to "his right mind" until he had undergone more than four years of treatment while confined in an Alabama insane hospital—from July, 1948 to November 12, 1952. At the time of petitioner's trial he had spent substantially his entire adult life in insane institutions—more than eight years.

In April, 1949, Dr. Moorer, a neuropsychiatrist for the State of Alabama, examined petitioner and diagnosed him as a schizophrenic, paranoid type, insane, incompetent, and recommended that he should be placed in an

insane hospital (R. 154). Everyone of the more than half dozen doctors that examined petitioner from 1944 to 1949 diagnosed him as insane and mentally incompetent.

Although in 1948 admittedly petitioner was of such unsound mind that he could not stand trial, even with the assistance of court appointed counsel, four year later he was pronounced restored to sanity and then tried and convicted on a statement given without the advice of counsel or the protection of a court and during a time when all medical opinion agreed that he was insane (R. 63).

For hundreds of years due process of law has required that the insane be protected from criminal trial during their insanity. The Alabama courts respected this requirement. But the Alabama courts allowed petitioner to be convicted on a statement sucked out of him after nine or ten hours of relay questioning at a time when petitioner was insane. Surely if due process of law protects a defendant from being tried while mentally incompetent, it protects him from being convicted on a statement obtained after many hours of prolonged questioning while the defendant was mentally incompetent.

Under the law of Alabama, confessions are prima facie inadmissible; the state has the burden of affirmatively showing that the confession was voluntarily made. **Bonner v. State**, 55 Ala. 242, 245, 246; **McCullars v. State**, 208 Ala. 182, 94 So. 55; **Baird v. State**, 215 Ala. 27, 109 So. 161. The trial judge in Alabama has the duty of determining whether the confession was voluntary. **Hines v. State**, 260 Ala. 668, 72 So. 2d 296.

In this case the Alabama Court of Appeals stated that such broad discretion is vested in the trial court in determining whether a confession is voluntary that it could not find an abuse of discretion in its admission (R. 247).

We have then a judicial decision that petitioner's confession was voluntary as a matter of law.

Whatever test of voluntariness was applied by the Alabama courts, we submit it was a different test than that compelled by the decisions of this Court in construing the due process requirement of the Constitution.

This Court has made it clear that the test of whether a confession offends Constitutional due process is different for the normal defendant and the mentally deranged. In **Stein v. New York**, 346 U. S. 156, 185, this Court stated:

> "The limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What would be overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal."

In the **Stein** case, this Court emphasized that those defendants "were not young, soft, ignorant or timid. They were not inexperienced in the ways of crime or its detection, nor were they dumb as to their rights."

Apply the plain implication of this language to petitioner. Petitioner was only twenty-five years old at the time of his arrest. He had spent all of his adult life in a government insane hospital, except for the period during which the alleged crime was committed when petitioner was over leave from the insane hospital. The records of the insane hospital showed that he was adjudged 100% mentally incompetent and insane at the very time of his arrest and alleged confession. What was "the power of resistance" of such a defendant? So far as appears this was the first involvement petitioner had ever had with criminal procedures. He was as inexperienced and as ignorant of his rights as the prisoners in the **Stein** case were otherwise.

The Alabama Supreme Court has itself recognized this general principle—that a different test is required for the mentally weak.

> "Manifestly, if the defendant is of tender age or weak intellect, his will may be the more easily overcome by the same circumstances than that of one who is more intelligent or more mature. For this reason greater attention should be paid to such a defendant's situation and surroundings."

**Curry v. State**, 203 Ala. 239, 82 So. 489, 493.

And see the strong statement of the Alabama Court in **Bonner v. State**, 55 Ala. 242, 245, 246. It is not, however, in the statement of abstract principles but in their practical application that criminal procedures must be weighed against the challenge of due process.

In **Fikes v. Alabama**, ... U. S. ..., 77 S. Ct. 281, this Court reversed a conviction obtained through the use of confessions which this Court found were not voluntarily made. This Court stated:

> "We hold that the circumstances of pressure applied against the power of resistance of this petitioner, who cannot be deemed other than weak of will or mind, deprived him of due process of law."

This Court in the **Fikes** case held that the totality of circumstances required a reversal. The two most significant circumstances in the **Fikes** case were the weakness of will or mind of the defendant and the persistent questioning: Petitioner Blackburn's mental derangement was far greater than that of Fikes, and the sustained, uninterrupted questioning of Blackburn was twice as long as that of Fikes.

We submit that constitutional due process of law prohibits the use of a confession obtained from such a men-

tally deranged person as petitioner even if the confession was obtained without the vice of sustained questioning. "The law will not suffer a prisoner to be made the deluded instrument of his own conviction." 2 Hawkins, Pleas of the Crown, C. 46, Sec. 34, quoted with approval in **Watts v. Indiana**, 338 U. S. 49, 54. Certainly the combination of petitioner's mental incompetency and his sustained, prolonged interrogation under the circumstances of this case require that his conviction be reversed. **Fikes v. Alabama**, ... U. S. ..., 77 S. Ct. 281; **Stein v. New York**, 346 U. S. 156, 185; **Harris v. South Carolina**, 338 U. S. 68.

This Court has held repeatedly that a confession improperly admitted requires reversal regardless of other evidence of guilt. **Malinski v. New York**, 324 U. S. 401; **Brown v. Allen**, 344 U. S. 443, 475; **Stroble v. California**, 343 U. S. 181, 190; **Gallegos v. Nebraska**, 342 U. S. 55, 63; **Watts v. Indiana**, 338 U. S. 49. In this case, however, substantially the only evidence implicating petitioner was the alleged confession. No one identified petitioner as being at the scene of the crime. His conviction rested squarely and almost entirely on the alleged confession.

Such convictions as that of this petitioner are miscarriages of justice "of such gravity and magnitude that they cannot be expected to happen in an enlightened system of justice, or be tolerated if they do." **Stein v. New York**, 346 U. S. 156, 181. Every court in the land now knows the general constitutional requirement that a conviction may not be predicated on a confession involuntarily obtained. If the due process requirement does not have application for this insane prisoner, it is difficult to see how it could be an effective shield in any case. This Court has the high responsibility of giving meaning to the beautifully stated principle that in the administration of criminal justice in the United States an accused is protected from being made "the deluded instrument of his own conviction." **Watts**

**v. Indiana**, 338 U. S. 49, 54. "No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution —of whatever race, creed or persuasion." **Chambers v. Florida**, 309 U. S. 227, 241.

The decision of the Alabama courts that petitioner's confession was voluntary and admissible in evidence should be reversed.

Respectfully submitted,

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W. H. MITCHELL, JR.,

.....

TRUMAN HOBBS,

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1. The Alabama rule is that, prima facie, a confession is not voluntary and prior to the reception in evidence of a confession there must be laid a proper predicate showing the voluntary character of the confession. Such a predicate having been laid, the confession becomes admissible and its weight is then for the jury 12

2. In Alabama a confession otherwise shown to be voluntary is not rendered inadmissible by the mere fact that it was made to investigating officers while the accused was in custody. A confession obtained through proper methods of questioning is not per se involuntary 16

3. The federal rule holds that spontaniety is not necessary to the voluntariness of a confession, and that neither the common law nor the Fourteenth Amendment prohibits the proper questioning of persons suspect-

ed of crime. No denial of "due process" can be assumed from the bare fact of interrogation while in custody 18

4. The Supreme Court has cast aside convictions of crime obtained in state courts by the use, in whole or in part, of confessions only in instances wherein there existed clear inference that the alleged "confession" was not voluntary. While admittedly prolonged examination can be inherently coercive if the so-called "suction process" be used, interrogation per se has not been outlawed. It is still the law that a person has a constitutional right to confess in answer to proper police interrogation 21

5. If the confession springs solely from the accused's remorse, apprehension, and consciousness of guilt, it is voluntary and admissible. Where sanity is an issue, the jury's finding that the accused was sane is equivalent to a finding that he had mental capacity to confess 24

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

No. 426

JESSE BLACKBURN,
*Petitioner,*

VS.

STATE OF ALABAMA,
*Respondent.*

## BRIEF AND ARGUMENT ON THE MERITS

## BRIEF AND ARGUMENT FOR RESPONDENT

### I

### OPINION OF THE COURT FOLLOWS

The opinion of the Court of Appeals of Alabama is reported as follows:

**Jesse Blackburn v. State of Alabama**, 8th Division 407, 88 So. 2d 199.

The case was decided on November 16, 1954. An application for rehearing in the Court of Appeals of Alabama was denied without opinion on March 15, 1955. The petitioner filed a petition for writ of certiorari to the Court of Appeals of Alabama in the Supreme Court of Alabama and the writ was denied on April 12, 1956. **Jesse Blackburn v. State of Alabama**, 8th Division 805, 88 So. 2d 205. An application for rehearing in the Supreme Court of Alabama was denied without opinion on June 21, 1956.

## II.

## JURISDICTION

The petitioner has been granted a writ of certiorari from the Supreme Court of the United States to review the judgment of the Court of Appeals of Alabama rendered November 16, 1954, rehearing denied March 15, 1955, under the provisions of Title 28, Section 1257, United States Code, Judiciary and Judicial Procedure. (See petitioner's brief pages 2 and 3)

## III.

## STATUTE AND CONSTITUTIONAL PROVISION

The statute prescribing the punishment for one convicted of robbery in Alabama is Title 14, Section 415, Code of Alabama 1940. Said statute reads as follows:

"§415. Punishment of robbery.—Any person who is convicted of robbery shall be punished, at the

discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years."

Section 1 of the Fourteenth Amendment to the Constitution of the United States is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## IV

## ISSUES

Whether the petitioner, who stands convicted in a State court of robbery, was denied "due process" of law within the meaning of the Fourteenth Amendment to the Constitution of the United States by virtue of the admission into evidence, over his objections, of his confession which he alleges to have been made involuntarily. The State of Alabama denies the soundness of this contention and insists that the confession was voluntary and was, therefore, admissible into evidence.

## V

## STATEMENT OF THE CASE

The petitioner was tried and convicted in the Circuit

Court of Colbert County, Alabama, under an indictment charging the offense of robbery. The petitioner entered a plea of "not guilty by reason of insanity" and a general plea of "not guilty" and was found guilty as charged in the indictment by the jury. Punishment was fixed at imprisonment in the penitentiary of Alabama for a period of twenty years. The trial proceedings were reviewed by the Court of Appeals of Alabama which affirmed the judgment of conviction and the sentence imposed. **See Jesse Blackburn v. State** (Alabama Appellate, 8th Division 407, November 16, 1954). The Supreme Court of Alabama on April 12, 1956, denied his petition for writ of certiorari to the Court of Appeals of Alabama. On September 15, 1956, petitioner filed with the Supreme Court of the United States his petition for writ of certiorari directed to the Court of Appeals of Alabama. The writ of certiorari was granted by this Honorable Court on December 3, 1956. See **Jesse Blackburn v. State of Alabama,** Docket No. 426, October Term 1956, Supreme Court of the United States.

## VI

## STATEMENT OF THE FACTS

The facts of this case, as found by the Court of Appeals of Alabama, are as follows:

"The State's evidence was to the effect that Thomas Clyde Wright operated a rolling store for one W. N. Greenhill. On April 19, 1948, Mr. Wright drove the store over his regular route. He started up Crowell Hill, on the Allsboro Road, in Colbert County, after dark. At that time he had in his possession a bill fold containing approximately $76.00 belonging to Mr.

Greenhill and a bill fold containing $51.00 of his own money. As he put his truck in 'double low' he saw someone coming off the bank toward the road with something in his hand that looked like a gun. He remembered nothing further until he regained consciousness in a hospital two weeks later. At that time he had neither the bill folds nor the money.

"Mr. and Mrs. Hubbard and J. C. James were on Crowell Hill and saw the rolling store stopped on the road. A maroon colored Buick, bearing an Illinois license plate, was parked by it. These witnesses heard a 'rumbling noise' like the sounds of a struggle from inside the store. Mr. James testified two colored men got into the Buick and drove away. Mr. James and Mr. Hubbard armed themselves and returned to the scene about thirty minutes later. They found Mr. Wright at the rear of the store, trying to scotch it so it would not roll down the hill. He was badly beaten, dazed and 'out on his feet.' They found a blood-stained tire tool and two hats inside the store.

"Deputy Sheriff Stanford arrived at Crowell Hill between 10:30 and 11:30 that night and found two hats and a tire tool and blood inside the store. The articles found by him were introduced in evidence.

"Dr. Gary testified he examined Mr. Wright at the hospital on the night of the alleged robbery. He was unconscious and bleeding from the ears and nose. X-rays made later showed multiple linear fractures on the skull, caused by a blunt instrument used with great force.

"At the time of the alleged crime appellant was a resident of Chicago, Illinois. About a week prior there-

to he came to Alabama in company with Dennis Thorne and Robert Howell for the purpose of burying his deceased brother. The trip was made in a maroon Buick with an Illinois tag. The prosecuting witness testified he had seen these men and the automobile at the home of Dennis Thorne's brother on the Allsboro Road. One of the men bought a package of cigarettes from him and paid for it with a twenty dollar bill. On April 16, 1948, appellant married Fanny Rogers in Iuka, Mississippi. There was a wedding party that night at Jack Thorne's house. The couple spent that night at Leon Fuqua's and the next afternoon appellant left with Howell and Dennis Thorne. The next time his bride saw him was in May, 1948, when he was in the Colbert County jail.

"According to the State's evidence, on May 8, 1948, after appellant was arrested and brought to Colbert County from Gary, Indiana, he confessed the crime to deputy sheriff Stanford. The confession was reduced to writing and signed by appellant two days later. The confession was admitted in evidence as State's exhibit 'A' on voir dire examination for the purpose of determining defendant's mental capacity at the time of making the confession. It was also admitted in evidence before the jury as State's exhibit 'D.' In the confession the defendant detailed the movements of the trio from the time they left Chicago until the night of the robbery; told of his marriage to Fanny Rogers; said there was a conspiracy between the three men to rob the driver of the rolling store, which defendant said he subsequently tried to prevent. He stated that at the time of the robbery, 'I carried a small wrench which I now identify as the one I used. Shirt I was wearing that night I identify as same which had blood on it and was

washed out by Burneice Moore the night we spent in Nashville. The hat officers found in Rolling Store I identify it as the one Robert Hal was wearing at the time of the robbery, but this hat belonged to me. I now have been presented with a heavy tire tool which officers said was found in Rolling Store, I identify it as the one Robert Hal used to hit the driver of the rolling store, three times on the head.' In the confession defendant stated he flagged the store down on the steep part of the hill. Robert Howell rushed up behind defendant as he stepped on the running board. After Robert Howell struck the driver defendant got the change from his right front pocket while Robert Howell was going through his other pockets. After leaving the scene defendant helped to count the money and received $28.00 as his share and he disposed of some checks that were in the bill folds.

"For the defandant, Thomas J. Grace, a field examiner for the office of the Regional Attorney of the Veterans' Administration, identified certain records showing that at the time of the commission of the alleged crime defendant was a 25 year old negro man with a history of mental disorders. On July 1, 1944, at Drew Field, Florida, he was diagnosed as unfit for military service because of psychosis. The Report of the Board of Medical Officers was that he had 'recurrent periods of marked confusion and over-activity, assaultiveness with catatonic posturing, teeth grinding followed by severe headache and complete amnesia concerning his behavior, constitutes a threat to others when subject to such attacks,' and recommended his transfer to a Veterans administration facility for further treatment.

"On September 8, 1944, appellant was admitted to a

Veterans Administration hospital at Danville, Illinois, from Drew Field, with diagnosis of dementia praecox, simple type, and a history of hallucinations and defective judgment and insight. There, on September 11, 1944, he was given a diagnosis of 'psychosis, manic depressive, manic phase.' On February 14, 1948, the Danville Veterans hospital placed defendant on a ten-day leave of absence with his sister. He failed to return at the end of ten days and was placed on a 90 day trial visit. On May 24, 1948, not having returned, he was formally discharged from the hospital. His diagnosis on discharge was 'Schizophrenic reaction, paranoid type. The alleged offense occurred prior to the discharge from the hospital. Also a report of an examination by Dr. M. L. Moorer, neuropsychiatrist, April 22, 1949, with a diagnosis 'Schizophrenic reaction, paranoid type. Insane, incompetent and should be placed in insane hospital.' And a rating sheet by the Veterans' Administration; showing defendant's rating to be, 'Schizophrenic reaction, paranoid type, incompetent from 5-24-48.'

"The record discloses that after appellant's arrest he showed signs of insanity in the jail and was admitted to Searcy Hospital for observation and report under the provisions of Articles 1 and 2 of Title 15, Code 1940, on July 29, 1948, and remained there until November 12, 1952, when he was released into the custody of Colbert County authorities as sane and competent to stand trial.

"On the trial defendant testified the signatures on the bottom of each page of the purported statement to deputy sheriff Stanford appeared to be his signatures but the statement was not true and he had no recollection of having made or signed it. He did not remember being questioned by the sheriff or his deputy and did

not remember that anything in the statement took place. He testified he did not commit the offense charged. He also testified he did not remember being in Colbert County in 1948; did not remember being in jail there in 1948 and that he did not remember getting married.

"After proper predicate was laid the State offered the confession in evidence.

"The defendant objected to the introduction of the confession because the corpus delecti has not been proven and because the defendant could be shown not to have had the mental capacity to be a witness on May 8, 1948.

"The defendant, on voir dire, introduced depositions of Dr. Harry S. Rowe, assistant Superintendent of Searcy Hospital, and Dr. J. S. Tarwater, Superintendent of Alabama State Hospitals. The report of the lunacy commission appointed July 26, 1948, to investigate the sanity of defendant was attached as exhibit 'B' to each of said depositions. This report was signed by Drs. Tarwater, Rowe, and A. M. Richards, and recites in part:

"It is the opinion of each of us, and our opinion jointly and collectively, that the said Jesse Blackburn at the time of his admission to the Searcy Hospital on July 29, 1948, was insane and incompetent. During his stay in the hospital he has continued to exhibit abnormal thinking and abnormal behavior and it is our opinion that he is presently insane. From a study of his case and using information from several other mental hospitals where he has formerly been treated it is our further opinion that he was insane at the time of the com-

mission of the crime for which he is charged."

"Dr. Rowe stated in answer to interrogatories that defendant was suffering from schizophrenia of the paranoid type; in his opinion he was insane at the time of the commission of the crime.

"Dr. Tarwater stated that the commission, from a study of the reports and the findings in the case, immediately after hospitalization, was of the opinion that defendant was mentally ill and incompetent during April 1948, and during the period from January 1, 1948 to July 29, 1948.

"The State introduced the cross interrogatories of Drs. Rowe and Tarwater and the depositions of Dr. A. M. Richards, a staff physician at Searcy Hospital, and a member of the lunacy commission.

"Dr. Rowe stated that at times while in the hospital defendant's thinking and behavior was normal, and that both his thinking and behavior were more normal than abnormal, and that he had lucid intervals.

"Dr. Tarwater stated defendant exhibited abnormal thinking and abnormal behavior for several months after his admission to the hospital. In his opinion defendant was mentally incompetent on April 19, 1948, and was mentally ill and mentally incompetent on May 8, 1948.

"Dr. Richards stated in answer to direct interrogatories that he, Dr. Tarwater and Dr. Rowe found, as stated in the report, that defendant was insane at the time of the commission of the crime for which he was charged. In answer to cross interrogatories he

stated that defendant had been normal mentally since he first saw him; that at times his behavior was normal; his thinking and his behavior was more normal than abnormal; at times he was rational in his thinking and behavior; he did not think defendant had lucid intervals; his mental condition on April 19, 1948, was normal, and his mental condition on May 8, 1948, was good; that defendant did not have psychotic episodes at any time that he saw him.

"Deputy Sheriff Stanford then testified for the State that he questioned defendant in the Colbert County jail on May 8, 1954, for five or six hours and returned after supper and continued the questioning. The greater part of the time he was alone with the defendant, but the Sheriff and deputy Bo Riner were present some of the time. Defendant answered questions like any normal person he has examined. He told his name, address, his past occupations and the date he left Chicago. The witness reduced the statement to writing and read it to defendant in the presence of the sheriff, Mr. Riner, and Mrs. Craig, the notary public, and the defendant signed it. There was nothing about defendant's appearance to indicate that he was a sick man. No threats or offers of reward were made to induce defendant to sign the statement.

"The State again offered the confession as State's Exhibit 'A' only for the purpose of the voir dire hearing. Defendant objected to its introduction because it was taken over a period of hours; it could not reflect the continuity of thought on the part of the witness; could not determine in any way his mental capacity to make the statement; it is otherwise shown to be involuntary; the corpus delicti has not been proven; the

statement is incompetent and illegal, and by express statement of Mr. Stanford the statement was put down in his words and not those of defendant. The court overruled the objection, stating that the confession was being received at that time only for the court's inspection on the question of whether it should be admitted later for the jury's consideration. Defendant duly excepted.

"The jury returned to the court room and the State again laid a predicate for the introduction of the confession. On cross examination deputy Stanford testified that on May 8, 1948, he talked with the defendant from 1:00 to 6:00 and from 7:00 until 10:00 or eleven that night. Most of the time they were in a room 4 x 6 or 6 x 8; part of the time the sheriff and another deputy were present; they might have worn their guns and badges; after staying in jail for some time defendant began to show signs of insanity. The witness also testified the defendant talked rationally and gave sensible answers at the time the confession was made. His eyes were clear and he did not appear to be nervous. The State then offered the confession in evidence as exhibit 'D' to the witness' testimony. The court overruled defendant's objection and defendant excepted."

The Court of Appeals of Alabama, further found that there was no testimony tending to contradict the evidence of the State that the confession was not induced by duress or promise.

## VII

## BRIEF AND ARGUMENT

1. The rule in Alabama, as to the admissibility of

confessions in evidence, is that, prima facie, a confession is not voluntary, and there must be evidence addressed to the trial judge rebutting that presumption and showing prima facie that the confession was voluntarily made, unless; of course, the circumstances attending the confession affirmatively disclose its character. When a proper predicate has been laid, voluntary confessions become admissible and their weight is for the jury.

**Smitherman v. State,** (Ala. 1956), 85 So. 2d 427;

**Hines v. State,** 260 Ala. 668, 72 So. 2d 296;

**Myhand v. State,** 259 Ala. 415, 66 So. 2d 544;

**Taylor v. State,** 249 Ala. 130, 30 So. 2d 256;

**Phillips v. State,** 248 Ala. 510, 28 So. 2d 542;

**Johnson v. State,** 242 Ala. 278, 5 So. 2d 632;

**Dyer v. State,** 241 Ala. 679, 4 So. 2d 311;

**Vernon v. State,** 239 Ala. 593, 196 So. 96;

**Canty v. State,** 238 Ala. 384, 191 So. 260;

**Stewart v. State,** 231 Ala. 594, 165 So. 840;

**Jackson v. State,** 226 Ala. 72, 145 So. 656.

As pointed out under the list of authorities cited, supra, the rule in Alabama is that confessions are prima facie involuntary and, prior to their admission into evidence, the prosecution must lay a predicate for their admission by testimony showing their voluntary character. When a predicate has been laid, confessions become admissible and their weight is for the jury. We submit that the predicate laid preliminary to the admission of the petitioner's confession was legally suf-

ficient and clearly demonstrated the voluntary character of his confession. Being voluntary and not having been induced by extraneous forces of circumstance calculated to deprive the petitioner of his will and mental freedom either to admit, deny, or stand mute, to the accusation of crime, his confession of guilt flowed from his desire to unburden his soul. Since the law always has recognized the right of an accused freely to confess guilt, the petitioner was not deprived of "due process."

We look to the facts from the record for the nature of the predicate laid. It was established through voir dire examination of Deputy Sheriff Stanford. See statement of facts, supra. Mr. Stanford testified that he questioned the petitioner for several hours on May 8, 1948; that the greater part of the time he was alone with the petitioner, but the sheriff and another deputy sheriff were present some of the time; that the petitioner answered questions like any normal person; that he told his name, address, his past occupations, and the date he left Chicago; that the confession was reduced to writing and read to the petitioner in the presence of the sheriff, another deputy sheriff, and a notary public, and the petitioner signed it; that there was nothing about the petitioner's appearance to indicate that he was a sick man; and that no threats or offers of reward were made to the petitioner to sign the confession.

It was shown by the evidence that, prior to the petitioner's confession, no one had offered him any promise, hope of reward, remuneration, or inducement of any kind; that he was not told that it would be better for him if he did confess or worse for him if he did

not confess; that he was not threatened or coerced, nor was any force or violence used toward him to induce a confession.

In brief, the petitioner's counsel states that petitioner testified that he had no recollection of the crime, denied the truth of the confession, and stated that he did not remember making the confession. This Honorable Court's attention is called to the fact that the petitioner did not testify on voir dire, but waited until after the confession had been received in evidence by the trial court before he took the witness stand.

The only evidence introduced on voir dire, in addition to the testimony of Mr. Stanford, was the depositions of the three doctors who made up the lunacy commission appointed July 26, 1948, to investigate the sanity of the petitioner. The report of this lunacy commission stated that the petitioner was insane at the time the report was made and at the time of the crime. However, the doctors' answers to interrogatories propounded to them showed that they were far from unanimous in their opinion as to the mental condition of the petitioner.

Dr. Rowe stated that at times while in the hospital, the petitioner's thinking and behavior were normal and that both his thinking and behavior were more normal than abnormal, and that he had lucid intervals.

Dr. Richards stated that the petitioner had been normal mentally since he first saw him; that at times his behavior was normal; that his thinking and his behavior were more normal than abnormal; that at times he was rational in his thinking and behavior; that his mental condition on April 19, 1948, was normal,

and his mental condition on May 8, 1948, was good; that petitioner did not have psychotic episodes at any time that he saw him.

The testimony of the doctors comprising the lunacy commission also showed that the report of that commission was not based solely on observation or examination of the petitioner by the doctors. Dr. Rowe stated that he probably observed the petitioner only twice a week and some of the times this observation was merely by seeing him as the doctor passed him on general ward rounds. Dr. Tarwater stated that he saw the petitioner on at least four or five occasions during his stay in the Searcy Hospital. and that approximately two or two and one-half hours would cover the entire time he saw the petitioner. Dr. Richards stated he did not see the petitioner often and for only ten or fifteen minutes at a time.

In the light of the conflicting evidence on voir dire, a question of fact for the determination of the trial judge was presented. The petitioner's confession, we submit, was lawfully received in evidence and without denial of "due process."

2. Alabama authorities are clear that a confession otherwise shown to have been voluntary is not rendered inadmissible by the mere fact that the accused confessed to officials while under arrest and in their legal custody. Incarceration in the ordinary manner and questioning by the authorities does not per se render the confession involuntary.

**Dennison v. State**, 259 Ala. 424, 66 So. 2d 552;

**Myhand v. State**, 259 Ala. 415, 66 So. 2d 544;

**Thomas v. State**, 257 Ala. 124, 57 So. 2d 625;

**Wilson v. State**, 256 Ala. 12, 53 So. 2d 559;

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**Ex parte Taylor**, 249 Ala. 667, 32 So. 2d 659;

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**Johnson v. State**, 242 Ala. 278, 5 So. 2d 632;

**Dyer v. State**, 241 Ala. 679, 4 So. 2d 311;

**Burns v. State**, ~~220~~ 226 Ala. 117, 145 So. 436;

**Redd v. State**, 69 Ala. 255.

The courts of Alabama, as well as the courts of other states, and the federal courts have consistently held to the rule that a confession, otherwise shown to have been voluntary and admissible in evidence, is not rendered inadmissible by the mere fact that it was made while the accused was under arrest and in legal custody of law enforcement officers. No decision to the contrary by the Supreme Court of the United States has come to our attention. The fact that the vast majority of voluntary confessions are made to police officers makes evident the soundness of the rule. Upon such officers rest the primary burden and responsibility for the detection and prosecution of crime. The time tested process of investigation at the scene of the crime, followed by police interrogation of suspects, is

today frequently society's only alternative in its effort to cope with an increasingly difficult crime problem. Here we emphasize that the continued acceptance by our courts, state and federal, of this historical crime detection method foreshadows no encroachment upon those rights guaranteed our citizens by the Fourteenth Amendment to the Constitution of the United States. The limit of those rights is that no citizen shall be compelled to incriminate himself. It is true that the pages of history have been bloodied by abuses of the privilege and practice of police interrogation of persons suspected of crime. It is not necessary to travel to foreign shores to find such abuses. They have from time to time echoed through the halls of justice in almost every court in our land. The instances of abuse in recent years, however, have shown a remarkable and steady decline attributable in our judgment to the widespread training of police personnel, under federal sponsorship, in scientific methods of crime detection, and to the watchful eye of this Honorable Court. To outlaw all extra-judicial confessions, voluntary and involuntary alike, would, in our judgment, entail consequences far more serious to society than the abuses which sometimes occur.

The record in the case at bar shows that the petitioner was questioned during the afternoon and early night of May 8, 1948, by only one law enforcement officer. At this time, the petitioner was under arrest and was being held in the Colbert County jail. We submit that the petitioner was not denied any right guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the United States likewise has consistently held to the rule that spontaneity is

not necessary to the voluntariness of a confession, and that the proper questioning of a suspect in custody of law enforcement officers is not prohibited either by the common law or by the Fourteenth Amendment. No denial of "due process" can be assumed from the bare fact that the accused is interrogated by investigating officers and confesses in response to their questioning.

**Brown v. Allen**, 344 U. S. 443, 73 S. Ct. 397, 97 L. Ed. 469;

**United States v. Carignan**, 342 U. S. 36, 72 S. Ct. 97, 96 L. Ed. 48;

**Gallegos v. Nebraska**, 342 U. S. 55, 72 S. Ct. 141, 96 L. Ed 86;

**Taylor v. Alabama**, 355 U. S. 252, 68 S. Ct. 1415, 92 L. Ed. 1935;

**Lyons v. Oklahoma**, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed. 1481;

**United States v. Mitchell**, 322 U. S. 65, 64 S. Ct. 896, 88 L. Ed. 1140;

**Johnson v. Alabama**, 316 U. S. 693, 62 S. Ct. 1299, 86 L. Ed. 1763;

**McNabb et al. v. United States**, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819;

**Lisenba v. California**, 314 U. S. 219, 62 S. Ct. 280, 86 L. Ed. 166;

**Ziang Sung Wan v. United States**, 266 U. S. 1, 45 S. Ct. 1, 69 L. Ed. 131;

**Powers v. United States**, 223 U. S. 303, 32 S. Ct. 281, 56 L. Ed. 448;

**Hardy v. United States**, 186 U. S. 224, 22 S. Ct. 889, 46 L. Ed. 1137;

**Bram v. United States**, 168 U. S. 532, 18 S. Ct. 183, 42 L. Ed. 568;

**Wilson v. United States**, 162 U. S. 613, 16 S. Ct. 895, 40 L. Ed. 1090;

**Pierce v. United States**, 160 U. S. 355, 16 S. Ct. 321, 40 L. Ed. 454;

**Hopt v. Utah**, 110 U. S. 574, 4 S Ct. 202, 28 L. Ed. 262;

**Brinegar v. United States** (C. C. A.—Okla.), 165 Fed. 2d 512, Affd. 338 U. S. 160, 69 S. Ct. 1302, 93 L. Ed. 1375;

**United States v. Gottfried et al.** (C. C. A.—N. Y.), 165 Fed. 2d 360, cert. den. 333 U. S. 860, 68 S. Ct. 738, 92 L. Ed. 1139.

No decision rendered by the Supreme Court of the United States is contrary to the rule followed by the states generally, and by Alabama in particular. Our nation's highest court recognizes the admissibility of confessions, otherwise shown to be voluntary, even though made by an accused while in the custody of law enforcement officers. While, admittedly, that court has consistently cast aside convictions had in state courts when the circumstances of the interrogation was shown to be coercive, we do not interpret the trend of its decisions to be towards outlawry of all interrogation by the authorities of persons accused of crime. On the contrary, the court has consistently held to the principle that a confession made to investigating officers is not per se involuntary, nor inadmissible in evidence if shown to have sprung from the free

will and choice of the accused to unburden himself by confessing the truth. While it is clear from the decisions that illegal pressures may be applied against an accused other than by actual physical or mental forces, threats, or intimidation, and that prolonged examination may of itself be inherently coercive, it is equally clear that confessions given after relatively short periods of interrogation, such as that shown by the evidence in the case at bar, are admissible if otherwise shown to be uncoerced. See **Taylor v. Alabama,** supra, **Lyons v. Oklahoma,** supra, and **Johnson v. Alabama,** supra.

4. Convictions of crime in state courts, obtained wholly or in part by introducing in evidence a confession of the accused, have been set aside by the Supreme Court of the United States only when all the surrounding facts and circumstances left no doubt that the "confession" was not voluntary. The test applied has been, whether the confession was the product of other than reasoned and voluntary choice. An accused is deprived of "due process" only when, by extraneous pressures and influence, he is deprived of mental freedom to withhold inculpatory statements. Admittedly, actual brutality, torture, beating, starvation, physical pain, or threatened violence are not necessary to void a confession. Any method calculated to break the will of the accused, and leave him without free choice to admit or deny or stand mute to the charge, is sufficient. Interrogation of a suspect has voided a confession thereby obtained only in situations inherently coercive in which the "suction process" was used. Interrogation per se has not been outlawed. Where coercion is lacking, no constitutional right of the accused is violated if, in answer to police questioning, he freely confesses.

**Stein v. New York**, 346 U. S. 156, 73 S. Ct. 1077, 97 L. Ed. 1522;

**Watts v. Indiana**, 338 U. S. 49, 69 S. Ct. 1347, 93 L. Ed. 1434;

**Harris v. South Carolina**, 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1440;

**Turner v. Pennsylvania**, 338 U. S. 62, 69 S. Ct. 1352, 93 L. Ed. 1443;

**Lee v. Mississippi**, 332 U. S. 742, 68 S. Ct. 300, 92 L. Ed. 330;

**Haley v. Ohio**, 332 U. S. 596, 68 S. Ct. 302, 92 L. Ed. 224;

**Malinski et al. v. New York**, 324 U. S. 401, 65 S. Ct. 781, 89 L. Ed. 1029;

**Lyons v. Oklahoma**, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed 1481;

**Ashcraft et al. v. Tennessee**, 322 U. S. 143, 64 S. Ct. 921, 88 L. Ed. 1192;

**Anderson et al. v. United States**; 318 U. S. 350, 63 S. Ct. 599, 87 L. Ed. 829;

**McNabb et al. v. United States**, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819;

**Ward v. Texas**, 316 U. S. 547, 62 S. Ct. 1139, 86 L. Ed. 1663;

**Lisenba v. California**, 314 U. S. 219, 62 S. Ct. 280, 86 L. Ed. 166;

**Vernon v. Alabama**, 313 U. S. 547, 61 S. Ct. 1092, 85 L. Ed. 1513;

**Lomax v. Texas**, 313 U. S. 544, 61 S. Ct. 956, 85 L. Ed. 1511;

**White v. Texas**, 309 U. S. 631, 60 S. Ct. 706, 84 L. Ed. 989;

**Canty v. Alabama**, 309 U. S. 629, 60 S. Ct. 612, 84 L. Ed. 988;

**Chambers et al. v. Florida**, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716;

**Brown et al. v. Mississippi**, 297 U. S. 278, 56 S. Ct. 461, 80 L. Ed. 682;

**Ziang Sung Wan v. United States**, 266 U. S. 1, 45 S. Ct. 1, 69 L. Ed. 131.

We concede that "due process" within the meaning of the Fourteenth Amendment is lacking where an accused has been convicted in a state court upon the basis of a confession not shown to have been voluntary. We concede that continued and unremitting police interrogation of an accused over such a period of time as is calculated to break his will and mental freedom to admit, deny or stand mute, is inherently coercive, and that a confession obtained by such a suction process is involuntary. See **Ashcraft et. al. v. Tennessee.** supra. We submit, however, that the facts at bar do not bring the petitioner's case within that rule. The record raises no question of police brutality. It raises no suspicion that the petitioner was "sweated" to the breaking point. There is no indication that the petitioner's arraignment was delayed or that he unlawfully was held in custody or denied his constitutional right to remain silent. There is no evidence of discourtesy towards or indignities inflicted upon this petitioner. We find no indication that the law enforcement officers were not friendly or sympathetic towards him. Since there is no indication that he requested or desired the services of an attorney, the officers having his custody are not

charged with having denied his constitutional right in that respect. We find in the circumstances of his interrogation nothing "inherently coercive" as that term has been used and defined by the decisions of this Honorable Court construing the "due process" clause of the Fourteenth Amendment to the Constitution of the United States as it relates to police interrogation of persons suspected of crime. We submit that the facts of the petitioner's case are not analogous to those of any decisions of this court concluding that prolonged questioning of an accused had, of itself alone, rendered his confession involuntary. Cf. **Watts v. Indiana,** supra, **Harris v. South Carolina,** supra, and **Turner v. Pennsylvania,** supra.

5. If the confession springs solely from the accused's remorse, apprehension, and consciousness of guilt, it is voluntary and admissible. Where sanity is an issue, the jury's finding that the accused was sane is equivalent to a finding that he had mental capacity to confess.

**Dennison v. State**, 259 Ala. 424, 66 So. 2d 552;

**Redwine v. State,** 258 Ala. 196, 61 So. 2d 724;

**People v. Cokahnour**, 120 Cal. 253, 52 Pac. 505;

**Fitzhurgh v. State,** 35 Ala. App. 18, 43 So. 2d 831;

**State v. Pamelia,** 122 La. 207, 47 So. 508;

**State v. Jones,** 127 La. 694, 53 So. 959;

**State v. Jones et al.,** 47 La. Ann. 1525; 18 So. 515;

**Young et al. v. State,** 90 Md. 579, 45 Atl. 531;

**Carlisle v. Texas**, 37 Tex. Crim. Rep. 108, 38 S. W. 991;

**Herndon v. State**, 50 Tex. Crim. Rep. 552, 99 S. W. 558;

**State v. Leuth**, 5 Ohio C. C. 94;

**Bettis v. State**, 160 Ala. 3, 49 So. 781;

**Eskridge v. State**, 25 Ala. 30;

**State v. Sirmay**, 40 Utah 525, 122 Pac. 748;

**State v. Crank**, 2 Bail. (S. C.) 66, 23 Am. Dec. 117;

**Cahill v. People**, 111 Colo. 29, 137 Pac. 2d 673, 148 A. L. R. 536;

**Vinzant v. State**, 28 Ala. App. 220, 180 So. 736;

**Taylor v. State**, 27 Okla. Cr. 165, 225 Pac. 988;

**People v. Cleveland**, 251 Mich. 542, 232 N. W. 384;

**People v. Lehew**, 209 Cal. 336, 287 Pac. 337;

**Eiffe v. State** (Ind.), 77 N. E. 2d 750.

See:

20 Amer. Juris., Evidence, Section 523, p. 448;

22 C. J. S., Criminal Law, Section 828, p. 1451;

50 L. R. A. (N.S.) 1082, note;

18 L. R. A. (N.S.) 790, note.

The gist of the petitioner's contention is that since the constitutional propriety of his interrogation should be measured by his alleged mental instability, such interrogation was, as against this particular person, inherently coercive, and that his confession was, therefore, involuntary as a matter of law. We cannot accede to the soundness of this argument and submit that it is without support of legal authority. The trial judge, who heard the testimony on voir dire from the wit-

nesses, found against this contention when he admitted the confession into evidence. The petitioner pleaded specially "not guilty by reason of insanity," and his sanity was a prime factual issue in the case. The jury resolved that issue against him after hearing all the testimony in the case, and after hearing the full and fair instructions from the trial judge. That finding by the jury was equivalent to a finding that he was competent to testify as a witness and competent to confess his deed. The contents of the confession showed that the petitioner explained the events before, during, and after the crime in great detail to Deputy Sheriff Stanford. This petitioner obviously confessed through the exercise of his free will and was prompted to unburden his soul by a full disclosure of the truth. No extraneous pressure was exerted against him. His right voluntarily to confess was a personal and constitutional right.

## VIII

## CONCLUSION

We believe that the prosecution laid a proper and sufficient predicate establishing the voluntary character of the petitioner's confession, and that it, therefore, was properly admitted into evidence. We conclude that the petitioner was not denied "due process" within

the meaning of the Fourteenth Amendment to the Constitution of the United States. We, therefore, respectfully submit that the case at bar should be affirmed.

Respectfully submitted,
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I, Bernard F. Sykes, one of the attorneys for Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 25th day of April, 1957, I served a copy of the foregoing brief and argument on one of the attorneys for the petitioner by mailing a copy in a duly addressed envelope to said attorney of record as follows:

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